

# **BOND PURCHASE AND LOAN AGREEMENT**

**LOUISVILLE MEDICAL CENTER, INC.**

**\$6,550,000**

**Louisville/Jefferson County Metro Government, Kentucky  
Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009**

**Dated  
as of  
July 31, 2009**

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## **BOND PURCHASE AND LOAN AGREEMENT**

This BOND PURCHASE AND LOAN AGREEMENT, dated as of July 31, 2009 (the "Agreement") is by and among the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, a political subdivision duly organized and validly existing under the laws of the Commonwealth of Kentucky (the "Issuer"), LOUISVILLE MEDICAL CENTER, INC., a Kentucky nonprofit corporation (the "Borrower"), and FIFTH THIRD BANK, a Michigan corporation (the "Purchaser" or "Holder"), and FIFTH THIRD LEASING COMPANY (the "Escrow Agent"). Capitalized terms shall have the meanings set forth in Article I hereof unless the context or use clearly indicates another meaning or intent.

### **WITNESSETH:**

WHEREAS, the Industrial Buildings for Cities and Counties Act, KRS 103.200 to 103.285, as supplemented and amended, (the "Act") authorizes and empowers the Issuer to issue revenue bonds and loan the proceeds therefrom to an individual or entity for the purpose of the acquisition, construction, installation and equipping of "industrial buildings" (as defined in the Act) and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, after giving notice in accordance with the Act and Section 147(f) of the Code, the Jefferson County Attorney on behalf of the Louisville/Jefferson County Metro Government City Council held a public hearing on \_\_\_\_\_, 2009, with regard to the proposed financing, and upon finding that the Project would benefit the Issuer and its residents and would benefit employment and economic development, and complies with the purposes and provisions of the Act, then adopted an Ordinance on \_\_\_\_\_, 2009 approving the Project; and

WHEREAS, in order to assist in the financing of the Project and subject to requirements set forth herein, the Issuer proposes to issue the Louisville/Jefferson County Metro Government Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 in the principal amount of Six Million Five Hundred Fifty Thousand Dollars (\$6,550,000) (the "Bonds"), in one or more series, for the purpose of assisting the Borrower in (i) financing the costs associated with the acquisition, equipping and installation of new equipment of the Louisville Medical Center, Inc. Steam and Chilled Water Plant located at 235 Abraham Flexner Way, Louisville, Kentucky 40202 (the "Plant"); (ii) to pay certain bank debts incurred for the purpose of financing on an interim basis such improvements to the Plant; and (iii) to pay all necessary and reasonable expenses in connection with the issuance of the Bonds, including the costs of issuance of the Bonds (the "Project"); and

WHEREAS, the proceeds from the sale of the Bonds issued hereunder shall be held and applied in accordance with the terms hereof; and

WHEREAS, this Agreement provides for the repayment by the Borrower of the loan of the proceeds of the Bonds and further provides (a) for the Borrower's repayment obligation to be

evidenced by the LMC Note and (b) for this Agreement and the LMC Note to be secured by the Mortgage and Security Agreement, and other available security;

WHEREAS, the 2002 Bonds provide that Additional Bonds, ranking on parity as to security and source of payment with the 2002 Bonds may be issued by Louisville Metro if the Plant shall require renovation, replacement or reconstruction and/or shall prove to be of insufficient capacity to supply all of the steam and chilled water and related service requirements of the User Institutions, and to supply all of the steam and chilled water and related service requirements of all additional parties to the Contract, as certified by LMC, for the purpose of financing the cost of constructing and acquiring such additions, extensions, and improvements, if but only if, all of the User Institutions, and any new parties to the User Contract, agree to be bound to use the steam and chilled water and related services from the Plant as renovated, replaced, reconstructed or extended, and to pay for such usage which will be sufficient to pay the principal and interest on all Bonds Outstanding (as defined in the 2002 Bonds); and

WHEREAS, LMC certifies and has certified that the Plant requires renovation, replacement, and reconstruction and is of insufficient capacity to supply all of the steam and chilled water and related service requirements of the User Institutions, and to supply all of the steam and chilled water and related service requirements of all additional parties to the Contract; and

WHEREAS, the Bonds are being issued as Additional Bonds under the 2002 Bonds, ranking on parity as to security and source of payment with the 2002 Bonds;

NOW, THEREFORE, to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are intended to be issued, held, secured and enforced, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer, the Borrower, the Purchaser and the Escrow Agent execute and deliver this Agreement, and pursuant hereto the Issuer absolutely assigns to the Holder, and to its successors, and its and their assigns, all right, title and interest of the Issuer in and to the Revenues, the User Contract and this Agreement.

## ARTICLE I. **DEFINITIONS AND EXHIBITS**

**1.1. Definitions.** In addition to the words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings unless the context clearly otherwise requires:

**"Act"** means the Industrial Buildings for Cities and Counties Act, KRS 103.200 to 103.285, as supplemented and amended.

**"Additional Bonds"** means any bonds issued pursuant to Article X hereof and pursuant to the 2002 Bonds.

**"Agreement"** shall mean this Bond Purchase and Loan Agreement executed among the Borrower, the Purchaser and the Issuer, as amended from time to time.

**"Authorized Borrower Representative"** means the Person or Persons designated by the Borrower to act on its behalf with respect to the matters described herein.

**"Authorized Issuer Representative"** means the Mayor, any Deputy Mayor, the Metro Council Clerk, the Chief Financial Officer, the County Attorney, and all other appropriate officials and employees of the Issuer.

**"Banking Day"** means a day on which the domestic office of the Holder is open for the purpose of conducting substantially all of its business activities.

**"Bond Counsel"** means Stoll Keenon Ogden PLLC or an attorney-at-law (other than an employee of the Borrower) who is nationally recognized as being experienced in matters relating to the tax exemption of interest on bonds of states and political subdivisions.

**"Bond Legislation"** means, when used with reference to the Bonds, the ordinance providing for their issuance, approving this Agreement and other related matters including the approval of any amendment or supplement to this Agreement and related matters as amended or supplemented from time to time.

**"Bond Purchase Date"** means July 31, 2009.

**"Bonds"** means the Louisville/Jefferson County Metro Government Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 in the Principal Amount of Six Million Five Hundred Fifty Thousand Dollars (\$6,550,000) to be issued in substantially the form attached hereto as Exhibit B, and any Bonds issued in substitution or replacement therefor.

**"Borrower"** means Louisville Medical Center, Inc., a Kentucky, nonprofit corporation, including any surviving, resulting or transferee entity as permitted hereunder.

**"Closing Date"** means the date of authentication and delivery of the Bonds to the Holder.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the Regulations promulgated thereunder or applicable thereto.

**"Completion Certificate"** means the certificate required by Section 5.2.M hereof.

**"Completion Date"** means the date of completion of the Project, as that date is certified to the Holder as provided in Section 5.2.M hereof.

**"Default Rate"** means, after maturity or during the continuance of any Event of Default under the Loan Documents, a rate of interest equal to \_\_\_\_\_.

**"Determination of Taxability"** means, with respect to the Bonds, (a) the filing by the Borrower or any other person or entity with the Internal Revenue Service of any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of

Taxability has occurred, or (b) the final assertion by the Internal Revenue Service or any agent thereof to the effect that interest on the Bonds is includable in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person," as those terms are used in Section 147(a) of the Code); or (c) the final adoption of legislation or regulations or a final determination, decision, decree or ruling of any judicial or administrative authority which has the effect of requiring interest on the Bonds to be included in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person" as those terms are used in Section 147(a) of the Code); provided, however, that no Determination of Taxability shall result from the imposition of any preference or minimum tax by the provisions of the Code existing on the date of delivery of the Bonds. For purposes of clause (b) in the preceding sentence, an assertion by the Internal Revenue Service or any agent thereof shall be considered final when the Holder, the Issuer and the Borrower shall have received an opinion of Bond Counsel to the effect that such assertion is correct, and for purposes of clause (c) in the preceding sentence, a decision, decree or ruling by any judicial or administrative authority shall be considered final upon the expiration or waiver of all periods for judicial review or appeal, as the case may be.

**"Eligible Investments"** means: (i) Government Obligations or any money market funds which are invested solely in such obligations; (ii) Federal Home Loan Mortgage Corporation (FHLMC) participation certificates and senior debt obligations; (iii) Federal National Mortgage Association's (FNMA) mortgage backed securities and senior debt obligations; (iv) Student Loan Marketing Association (Sallie Mae) letter of credit backed issues and senior debt obligations; (v) Government National Mortgage Association (GNMA) guaranteed mortgage-backed bonds and guaranteed pass-through obligations; (vi) Certificates of deposit issued by, or time deposits or other banking arrangements with any bank, trust company or state banking association whose commercial paper is rated "Prime-1" or "Aa3" or better by Moody's Investors Service, Inc. or "A-1" or "A" or better by Standard & Poor's Rating Group; (vii) commercial or finance paper (having remaining maturities of not more than ninety (90) days) rated "Prime-1" or better by Moody's Investors Service, Inc. or "A-1" or better by Standard & Poor's Rating Group; (viii) obligations rated "Aa3" or better by Moody's Investors Service, Inc. and "A" or better by Standard & Poor's Rating Group; (ix) contracts for the purchase and sale of obligations of the type specified in (a) above with any institution rated "AA" or its equivalent by either Rating Agency; (x) repurchase agreements with any institution the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are rated "AA" or its equivalent by either Rating Service; and (xi) obligations of any state of the United States of America or any political subdivision or other instrumentality of any such state or any money market funds which are invested solely in such obligations, to the extent the interest on such obligations is excluded from the gross income of the owners thereof under Section 103 of the Code; provided, that such obligations are (a) rated in one of the three highest categories by either Rating Agency, or (b) fully secured by securities guaranteed as to principal and interest by the United States of America.

**"Environmental Laws"** means all provisions of laws, statutes, ordinances, rules, regulations, permits, licenses, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by any Governmental Authority concerning the protection of, or regulation of the discharge of substances into, the environment or concerning the health or safety

of persons with respect to environmental hazards, and includes, without limitation, the Hazardous Materials Transportation Act, 42 U.S.C. § 1801 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. §§7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §§2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §7401 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§651 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§11001 et seq., National Environmental Policy of 1975, 42 U.S.C. §§4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§300(f) et seq., and any similar or implementing state law, and all amendments, rules, and regulations promulgated thereunder.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"ERISA Affiliate"** means any trade or business, whether or not incorporated, which together with Borrower would be treated as a single employer under ERISA.

**"Escrow Agent"** means Fifth Third Leasing Company.

**"Event of Default"** shall have the meaning set forth in Section 13.1.A of this Agreement.

**"Event of Taxability"** means the occurrence of circumstances in which a Determination of Taxability shall have been found to have occurred, or which shall constitute a Determination of Taxability, and which results in the interest payable on the Bonds becoming includable in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person" as those terms are used in Section 147(a) of the Code), such occurrence of circumstances relating to a specific point in time; provided, however, that no Determination of Taxability shall result from the imposition of any preference or minimum tax by the provisions of the Code existing on the date of delivery of the Bonds.

**"Financial Statements"** means the financial statements of the Borrower, as applicable, and any accompanying statements and notes to such financial statements, and any other documents or data furnished to the Holder in connection therewith.

**"GAAP"** means generally accepted accounting principles in the United States of America in effect from time to time as promulgated by the Financial Accounting Standards Board and recognized and interpreted by the American Institute of Certified Public Accountants.

**"Government Obligations"** means noncallable direct obligations of, or obligations the payment of principal of and interest on which is unconditionally guaranteed by, the United States of America.



**"Governmental Authority"** means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limiting the generality of the foregoing, any agency, body, commission, court or department thereof, whether federal, state, local or foreign.

**"Hazardous Materials"** means any flammable explosives, radioactive materials, hazardous or toxic chemicals, wastes, by-products, pollutants, contaminants, compounds, products or substances, including, without limitation, asbestos, polychlorinated biphenyls, wastes, hydrocarbon or petroleum products, hazardous, regulated or toxic substances or related materials defined in any Environmental Laws.

**"Holder"** means Fifth Third Bank or a Person in whose name a Bond is registered on the Register and with respect to the Bonds, means the Purchaser or its registered assigns.

**"Interest Payment Date"** means, with respect to the Bonds, May 1 and November 1 of each year until payment in full of the Bonds.

**"Interim Financing Costs"** means the bank debts incurred by the Borrower for the purpose of financing on an interim basis improvements to the Plant as set forth on Schedule II.

**"Issuance Cost"** means all costs and expenses of issuance of the Bonds, including, but not limited to Bondholder counsel, Bond counsel and fees of the Issuer. Issuance Costs paid with proceeds of the Bonds shall not exceed the lesser of two percent (2%) of the aggregate face amount or the proceeds of the Bonds.

**"Issuer"** means the Louisville/Jefferson County Metro Government, Kentucky, a political subdivision duly organized and validly existing under the laws of the Commonwealth of Kentucky.

**"LMC"** means Louisville Medical Center, Inc., a Kentucky, nonprofit corporation, including any surviving, resulting or transferee entity as permitted hereunder.

**"LMC Note"** means the promissory note in the original principal amount of Six Million Five Hundred Fifty Thousand Dollars (\$6,550,000) issued and delivered by Borrower to Issuer.

**"Loan"** means the loan by the Issuer to the Borrower of the proceeds from the sale of the Bonds.

**"Loan Documents"** means this Agreement, the LMC Note, the Mortgage and Security Agreement, the Tax Matters Certificate, the Borrower's Certificate, Issuer's Certificate, UCC Financing Statements, and any and all other documents executed and delivered by Borrower to govern, evidence or secure the Obligations.

**"Louisville Metro"** means Louisville/Jefferson County Metro Government, Kentucky, a political subdivision duly organized and validly existing under the law of the Commonwealth of Kentucky.

**"Materials"** means all materials, supplies, chattels, fixtures, machinery, equipment or other articles of property furnished or to be furnished in connection with the construction of, and incorporated or to be incorporated into, the Project, which shall include all replacements thereof, additions thereto and substitutions therefor.

**"Mortgage and Security Agreement"** means the Mortgage and Security Agreement executed by Borrower as Debtor and Holder as Secured Party granting a parity security interest in all LMC property and all revenues of LMC.

**"Obligations"** means all unpaid principal and accrued and unpaid interest on the LMC Note, the Bonds and all accrued and unpaid fees and other obligations hereunder and all other obligations of Borrower to the Holder of every type and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising whether or not contemplated by Borrower or the Holder as of the date hereof, and all reasonable costs of collection and enforcement thereof, including reasonable attorney fees.

**"Official Action Date"** means March 10, 2008.

**"Outstanding" or "Bonds outstanding" or "Bonds then outstanding"** means as of the time in question, all Bonds which have been executed and delivered by the Issuer under this Agreement, except: (a) Bonds theretofore canceled or delivered to the Registrar for cancellation or because of payment at or redemption prior to maturity; (b) Bonds for which moneys sufficient for the payment or redemption of, or Government Obligations the principal of and interest on which when due will be sufficient to pay the principal of and interest on such Bonds, to the date fixed for payment or redemption, shall have been theretofore or shall be concurrently deposited with the Holder (whether upon or prior to the maturity or redemption date of any such Bonds); provided, that, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Holder shall have been made therefor, or waiver of such notice satisfactory in form to the Holder shall have been filed with the Holder; and (c) Bonds in lieu of which other Bonds have been authenticated and delivered under this Agreement.

**"Permitted Encumbrances"** means, as of any particular time, (a) any exception of title agreed to in writing by the Holder; (b) the parity liens securing the 2002 Bonds; (c) liens for ad valorem taxes and special assessments or installments thereof not then delinquent; (d) liens and security interests in favor of the Holder; (e) pledges or deposits to secure payment of workers' compensation obligations and deposits and indemnities to secure public or statutory obligations or for similar purposes arising in the ordinary course of the Borrower's business; (f) inchoate carrier's, warehousemen's, mechanics', laborer's and supplier's liens imposed by law and other similar liens arising in the ordinary course of business which secure payment of obligations not yet due and payable or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established; (g) any Additional Bonds, and (h) those further encumbrances (if any) shown on Schedule I hereto.

**"Person"** means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**"Plant"** means the Steam and Chilled Water Plant located at 235 Abraham Flexner Way, Louisville, Kentucky.

**"Principal Payment Date"** means, with respect to the Bonds, May 1 of each year until payment in full of the Bonds.

**"Project"** means the acquisition, construction, equipping and installation of new equipment of the Louisville Medical Center, Inc. Steam and Chilled Water Plant, located at 235 Abraham Flexner Way, Louisville, Kentucky 40202 (the "Plant"); to pay certain bank debts incurred for the purpose of financing on an interim basis such improvements to the Plant; and to pay all necessary and reasonable expenses in connection with the issuance of the Bonds including the costs of issuance of the Bonds.

**"Project Costs"** means those costs incurred in connection with the Project which are eligible to be financed and refinanced with the proceeds of the Bonds, as set forth in the Act, including, but not limited to: (a) obligations of the Borrower incurred for labor and materials (including obligations payable to Borrower) in connection with the acquisition, construction, installation, equipping, interim financing and refinancing of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation and equipping of the Project; (c) all costs and expenses of site preparation, engineering services, including the costs of the Borrower for test borings, surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising installation, as well as for the performance of all other duties required by or consequential to the acquisition, construction, installation and equipping of the Project; (d) all Issuance Costs incurred in connection with the issuance of the Bonds; (e) all costs and expenses which the Borrower shall be required to pay, under the terms of any contract or contracts, for the acquisition, construction, installation and equipping of the Project; and (f) any sums required to reimburse the Borrower for advances made for any of the above items or for any other costs incurred and for work done subsequent to the Official Action Date, which are properly chargeable to the Project.

**"Project Site"** means the Louisville Medical Center, Inc. Steam and Chilled Water Plant located at 235 Abraham Flexner Way, Louisville, Kentucky 40202 constituting the site of and a part of the Project.

**"Purchaser"** means, as to the Bonds, Fifth Third Bank, a Michigan corporation.

**"Register"** means the register kept and maintained by the Registrar for registration and transfer of the Bonds pursuant to Section 9.6 hereof.

**"Registrar"** means, as to the Bonds, the Borrower until a successor Registrar is appointed pursuant to applicable provisions of this Agreement. In addition to any other duties and responsibilities of the Registrar provided in this Agreement, the Registrar shall be charged with the responsibility of authenticating Bonds issued hereunder.

**"Revenues"** means (a) the payments required to be made by the Borrower pursuant to the provisions of Article III hereof, (b) all of the moneys received or to be received by

Borrower in respect of the User Contract, (c) all moneys and investments in the Project Fund, and (d) all income and profit from the investment of the foregoing moneys.

**"2002 Bonds"** means the County of Jefferson, Kentucky, Louisville Medical Center Refunding and Revenue Bonds, Series 2002 in the principal amount of \$18,000,000 dated as of May 15, 2002, the Ordinance, Trust Indenture, Loan Agreement, Mortgage and Security Agreement, and all constituent documents associated therewith.

**"Taxable Rate"** means an interest rate of \_\_\_\_% per annum.

**"Tax Matters Certificate"** means a certificate of the Borrower, received by the Holder, dated the Closing Date, signed by an Authorized Borrower Representative, in form and substance satisfactory to the Holder.

**"User Contract" or "Contract"** means that certain contract dated April 23, 2002 by and between the User Institutions, the Borrower and Louisville Metro, whereby the User Institutions are required to purchase from the Borrower all of the chilled water necessary for air conditioning their present buildings and to pay the operating costs of the Plant.

**"User Institutions"** means Jewish Hospital & St. Mary's Healthcare, Inc., Norton Healthcare, Inc., University Medical Center, Inc., University of Louisville, and Kentucky Community & Technical Colleges System, and any Additional Users of the Plant according to the terms of the User Contract.

**"Written Request"** with respect to the Borrower or the Issuer shall mean a request in writing signed by the authorized officer of the Borrower or the Issuer, as the case may be.

**1.2. Rules of Interpretation.** For all purposes of this Agreement, except as otherwise expressly provided, or unless the context otherwise requires:

A. **Agreement.** This "Agreement" means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

B. **Articles, Sections, Etc.** All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

C. **Singular and Plural.** The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

D. **Accounting Terms.** All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

E. **Terms Defined Elsewhere.** The terms defined elsewhere in this Agreement shall have the meanings therein prescribed for them.

1.3. **Exhibits.** The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A. Form of LMC Note.

Exhibit B. Form of Bonds.

1.4. **Schedules.** The following Schedules are attached to and by reference made a part of this Agreement:

Schedule I. Permitted Encumbrances.

Schedule II. Interim Financing Costs.

ARTICLE II.  
**AUTHORIZATION, ISSUANCE, EXECUTION  
AND PURCHASE OF THE BOND**

2.1. **Authorized Amount of Bonds.** The total principal amount of the Bonds to be issued under this Agreement is hereby expressly limited to the Bonds in the aggregate principal amount of Six Million Five Hundred Fifty Thousand Dollars (\$6,550,000) and any additional bonds.

2.2. **Issuance of Bonds.** The Issuer hereby authorizes the issuance of the Bonds to be issued under this Agreement for the purpose of providing funds to finance the Project. The Bonds shall (a) be in fully-registered form and in the form attached hereto as Exhibit B; (b) be dated the date of issuance thereof; (c) bear interest, have interest and principal payable, and mature on the date specified therein; (d) be redeemable and subject to redemption as provided in Article XI hereof; (e) be in the principal amount equal to the principal amount of the LMC Note; and (f) shall be executed by any of the Authorized Issuer Representatives.

2.3. **Payment of Bonds.** The Bonds shall rank on parity as to source of payment with the 2002 Bonds. The principal of, premium, if any, and interest on the Bonds shall be payable on each Interest Payment Date and Principal Payment Date, respectively, in lawful money of the United States of America at the office of the Holder from moneys of the Borrower at the times stated in the Bonds.

2.4. **Security for Bonds.** The Bonds shall rank on parity as to security with the 2002 Bonds. The Bonds shall be secured by the Mortgage and Security Agreement, the LMC Note and other Loan Documents.

2.5. **Purchase of Bonds.** The Holder agrees to purchase the Bonds from the Issuer on the Closing Date, subject to: (a) the performance by the Issuer and the Borrower of their respective obligations to be performed hereunder at and prior to the Closing Date, (b) the accuracy, in all material respects, in the reasonable judgment of the Holder, of the

representations and warranties of the Issuer and the Borrower herein as of the Closing Date, and (c) the following conditions, including the delivery by the Issuer and the Borrower, as the case may be, of such documents and items as are enumerated herein in form and substance satisfactory to the Holder:

A. **Execution and Delivery of Loan Documents.** The Loan Documents shall have been executed and delivered by the parties thereto, shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been approved in writing by the Holder; and the Issuer and the Borrower shall have duly adopted and there shall be in full force and effect such resolutions and/or ordinances as, in the opinion of Bond Counsel shall be necessary in connection with the transactions contemplated hereby.

B. **Delivery of Bonds.** The Issuer shall deliver the Bonds to the Holder contemporaneously with the delivery by the Holder of the purchase price into the Project Fund created under this Agreement.

C. **Legal Opinions.** The Holder shall have received (i) the approving opinion of Bond Counsel, dated the Closing Date, addressed to the Issuer and the Holder; (ii) the opinion of counsel to the Borrower, dated the Closing Date, addressed to the Issuer, Bond Counsel and the Holder, and (iii) the opinion of counsel to Issuer, dated the Closing date, addressed to the Borrower and Holder, each in form and substance satisfactory to the Holder.

D. **Borrower's Certificate.** The Holder shall have received the closing certificate of the Borrower, dated the Closing Date, signed by an Authorized Borrower Representative, in form and substance satisfactory to the Holder and the Issuer.

E. **Issuer's Certificate.** The Holder shall have received the certificate of the Issuer, dated the Closing Date, signed by an authorized Issuer Representative, in form and substance satisfactory to the Holder.

F. **Borrower's Constituent Documents.** The Holder shall have received true and correct copies of the Borrower's Articles of Incorporation and Bylaws, certificate of the secretary of state of the Commonwealth of Kentucky dated a recent date and evidencing good standing and existence in such state and such additional documentation from the Internal Revenue Service that establishes Borrower's status as a nonprofit corporation under Section 501(c)(3) of Internal Revenue Code, together with appropriate consents of its Board of Directors specifying the persons and their capacities authorized to execute and deliver all documents required by the Holder in connection with this Agreement.

G. **Bond Legislation.** The Holder shall have received a duly certified copy of the Bond Legislation with respect to the Bonds.

H. **TEFRA Notice.** The Holder shall have received satisfactory evidence that the requirements of Section 147(f) of the Code have been satisfied.

I. **Insurance.** The Holder shall have received satisfactory evidence in such form as the Holder may reasonably require that all types of insurance with respect to the Project, as more specifically set forth in Section 5.2.G hereof, are in full force and insure the respective

interests of the Holder and the Borrower, as appropriate, in the Project, as such interests may appear (with the Holder as the lender loss payee under standard mortgagee clauses) and that all such policies will not be canceled without thirty (30) days prior written notice to the Holder (which policies the Borrower shall keep in force so long as the Bonds are outstanding).

J. **Plans and Specifications.** The Holder shall have received the plans and specifications for the Project, or any changes thereto.

K. **Miscellaneous.** The Holder shall have received such additional legal opinions, certificates, proceedings, instruments and other documents as the Holder, its counsel or Bond Counsel may reasonably request to evidence compliance by the Issuer and the Borrower with legal requirements, the truth and accuracy, as of the Closing Date, of the representations of the Issuer and the Borrower contained herein and in the Loan Documents and the due performance or satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by such parties pursuant to the Loan Documents. If either the Issuer or the Borrower shall be unable to satisfy the conditions to the obligations of the Holder contained in this Agreement, then the Holder shall be under no obligation to purchase the Bonds and this Agreement shall terminate and the parties hereto shall be under no further obligation hereunder.

2.6. **Authentication.** No Bond issued hereunder shall be valid or obligatory for any purpose or entitled to any security or benefit under this Agreement or the other Loan Documents unless and until a certificate of authentication on such Bond shall have been duly executed by an authorized officer of the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Agreement.

2.7. **Accreditation of Holders of Bonds.**

A. **Initial Placement of Bonds.** The Holder hereby represents to the Issuer that, on the Closing Date, it is an "accredited investor" that is a "bank" within the meaning of Section 2(15)(i) of the Securities Act of 1933, as amended (the "1933 Act") or a "qualified institutional buyer" within the meaning of Rule 144A(a)(1) promulgated by the Securities Exchange Commission pursuant to the 1933 Act.

B. **Resale of Bonds.** The Holder hereby represents to the Issuer in connection with any resale of the Bonds, that it will obtain written certification, certified to the Holder and the Issuer, to the effect that the Person purchasing the Bonds in a secondary market transaction from the Holder is an "accredited investor" that is a "bank" within the meaning of Section 2(15) of the Securities Act of 1933, as amended (the "1933 Act"), or a "qualified institutional buyer" within the meaning of Rule 144A(a)(1) promulgated by the Securities Exchange Commission pursuant to the 1933 Act, or in the event that the principal, interest, and purchase price, if applicable, of the Bonds (or trust certificates evidencing an ownership interest in the Bonds) are then secured by a letter of credit, any "accredited investor" within the meanings of Section 2(15) of the 1933 Act.

- 2.8. **Bank Qualified.** The Issuer, the Borrower and the Holder acknowledge that the Bonds are “Qualified Tax-Exempt Obligations” for purposes of Section 265(b)(3) of the Code.

ARTICLE III.  
**LOAN OF PROCEEDS**

- 3.1. **Loan of Proceeds of Bonds.** Subject to the terms and conditions set forth in this Agreement, the Issuer shall loan the proceeds of the Bonds pursuant to the provisions hereof to the Borrower to finance the cost of acquisition, construction, installation and equipping of the Project.

3.2. **Details of Payment.**

A. **Repayment Obligations.** This Agreement provides for the repayment by the Borrower of the LMC Note and further provides for the Borrower's repayment obligation to be evidenced by the LMC Note. Interest on the LMC Note shall be calculated on the basis of a 360 day year basis with each month consisting of 30 days.

B. **Interest.** Prior to maturity, a Determination of Taxability or an Event of Default, the unpaid principal balance of the LMC Note representing the security for the Bonds shall bear interest at the rate of three hundred (300) basis points over thirty (30) day LIBOR.

C. **Principal and Interest Payments.**

(i) In consideration of and in repayment of the Loan, the Borrower shall make the payments provided for herein in time and amount sufficient to pay when due all principal and interest on the Bonds. Interest on the LMC Note shall be due and payable on each Interest Payment Date beginning on November 1, 2009, and principal on the LMC Note shall be due and payable on May 1 of each year, as more particularly described and set forth on Exhibit A to the LMC Note. A final installment representing the entire unpaid principal balance of the Loan, and all accrued and unpaid interest thereon, shall be due and payable on May 1, 2014. The LMC Note securing the Bonds shall mature on May 1, 2014.

(ii) If any installment of principal and/or interest provided herein becomes due and payable on a date other than a Banking Day, the maturity of the installment of principal or interest shall be extended to the next succeeding Banking Day.

D. **Rate Adjustment upon a Determination of Taxability or an Event of Default.** Notwithstanding anything in this Agreement to the contrary, in the event of (i) a Determination of Taxability, interest on the unpaid principal balance of the LMC Note shall be the Taxable Rate, commencing on the date of occurrence of the Event of Taxability and (ii) an Event of Default or after maturity, interest on the unpaid principal balance of the LMC Note shall be at the Default Rate, commencing on the date of occurrence of the Event of Default or maturity as applicable.



E. **Prepayment of LMC Note.** The LMC Note shall be subject to prepayment and shall be prepayable as provided in Article XI hereof.

3.3. **Security for the LMC Note.** The LMC Note and all the Obligations shall be secured by the Mortgage and Security Agreement and other available security as provided therein.

3.4. **Payment on LMC Note Pledged.** All payments to be made by the Borrower on the LMC Note will be pledged and paid to the Holder pursuant to an assignment and endorsement thereof to the Holder by the Issuer and, subsequent to the execution and delivery of the assignment, as to the Holder, the obligation of the Borrower to make such payments shall be absolute and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Issuer of any obligation to the Borrower, whether under this Agreement or otherwise, or out of any indebtedness or liability at any time owing to the Borrower by the Issuer.

3.5. **Effect of Payments.** The payments by the Borrower to the Holder as provided in Section 3.4 above shall be deemed made by the Borrower on account of the LMC Note and receipt of such payments by the Holder shall be deemed satisfaction of the payment obligations of the Issuer under the Bonds.

3.6. **Method and Place of Payments.** The Borrower shall pay to the Holder, at the Holder's office in \_\_\_\_\_, or at such other address or attention as the Holder may specify in writing, all amounts payable to the Holder with respect to the principal of, premium, if any, and interest on the LMC Note, without any presentation of the Bonds.

3.7. **Obligations of the Borrower Unconditional.** The obligation of the Borrower to make the payments pursuant to this Agreement and the LMC Note and to perform and observe the other agreements contained in the Loan Documents are absolute and unconditional. Until such time as the principal of, premium, if any, and interest on the Bonds, and all other payments provided for in this Agreement, shall have been fully paid or provision for the payment thereof shall have been made in accordance with this Agreement, the Borrower (a) shall not suspend or discontinue any payments pursuant to this Agreement or the LMC Note, (b) shall perform and observe all its other agreements contained in the Loan Documents to which it is a party, and (c) shall not terminate this Agreement or the LMC Note for any cause including, without limitation, failure to complete the Project, failure of title to the Project or any part thereof, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, or any change in the tax or other laws of the United States of America or of the Commonwealth of Kentucky or any political subdivision thereof.

3.8. **No Abatement.** The Borrower shall be obligated to continue to make the payments on the LMC Note required by Sections 3.2 and 3.4 above whether or not the Project is completed, damaged, destroyed or taken in condemnation and there shall be no abatement of any payments and other charges payable by the Borrower under the Loan Documents by reason of any such failure of completion, damage, destruction or taking by condemnation.

ARTICLE IV.  
**REPRESENTATIONS AND WARRANTIES**

**4.1. Representations by Issuer.** Issuer represents and warrants that:

A. **Due Organization.** Issuer is a municipal corporation and de jure political subdivision duly organized and validly existing under the laws of the Commonwealth of Kentucky. Under the provisions of the Act, Issuer is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. Issuer has been duly authorized to execute and deliver this Agreement. Issuer agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

B. **Loan of Proceeds.** Issuer agrees to loan the proceeds of the Bonds to the Borrower, subject to the consideration of the LMC Note and the Borrower granting a lien and security interest in the Project to the Holder, all for the benefit of the Holder of the Bonds, to the end that industry and the economy may be diversified and job opportunities promoted, and to secure the Bonds by pledging and assigning its interest in this Agreement and the LMC Note to the Holder pursuant to this Agreement.

C. **Assignment of Rights.** The Issuer represents that the Agreement and the LMC Note hereby are assigned to the Holder pursuant to this Agreement, and no further assignment is contemplated by the Issuer.

D. **Further Transfer.** Except for the assignments referenced above, the Issuer shall not attempt to further assign, transfer or convey its interest in the Project or the Loan Documents or create any pledge or lien of any form or nature with respect to the Project or the payments hereunder.

E. **Form 8038.** The Issuer will, upon preparation by and at the request of the Borrower, duly execute and return to the Bond Counsel for filing with the Internal Revenue Service, Form 8038, which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

**4.2. Representations by Borrower.** The Borrower represents and warrants that

A. **Due Organization.** The Borrower is a nonprofit corporation duly organized, validly existing and in good standing under and by virtue of the laws of the Commonwealth of Kentucky.

B. **Power.** The Borrower possesses the requisite power to enter into the Loan Documents to which it is a party, to borrow under such Loan Documents, to execute and deliver such Loan Documents and to perform its obligations thereunder.

C. **Authority.** The Borrower has taken the necessary action to authorize the execution and delivery of the Loan Documents to which it is a party and the borrowings thereunder and the granting of the security interests therein, and none of the provisions of such Loan Documents violates, breaches, contravenes, conflicts with, or causes a default under any provision of the Bylaws and/or Articles of Incorporation of Borrower, or, in any material respect,

violates, breaches, contravenes, conflicts with or causes a default under any provision of any existing note, bond, mortgage, debenture, indenture, trust, license, lease, instrument, decree, order, judgment, or agreement to which Borrower is a party or by which it or its assets may be bound or affected.

D. **Financial Statements.** The Financial Statements were prepared in accordance with standard accounting practices consistent with prior years, unless specifically otherwise noted thereon, and fairly present the financial condition of the Borrower as of the date thereof and the results of the Borrower's operations for the period then ended.

E. **No Material Adverse Change.** The information submitted by Borrower to the Holder, including but not limited to the Financial Statements, discloses all known or anticipated material liabilities, direct or contingent, of Borrower as of the dates thereof, and since such dates, there has been no material adverse change in Borrower's financial condition.

F. **Subsidiaries.** Borrower has no Subsidiary or other ownership interest in any Person.

G. **Binding Obligations.** Each Loan Document to which Borrower is a party, when issued for value, will constitute a legal, valid and binding obligation of Borrower enforceable against Borrower in accordance with its terms, except as the same may be limited by reorganization, bankruptcy, insolvency, moratorium or other laws affecting generally the enforcement of creditors' rights.

H. **Marketable Title.** Borrower has good and marketable title to all of its real property and good title to all of its other properties and assets shown on the balance sheet included in the Financial Statements, except such properties or assets as have been disposed of since the date of such statements in the ordinary course of business. Except for Permitted Encumbrances, none of the assets of Borrower are subject to any mortgage, pledge, security interest, title retention lien or other encumbrance, and, except for Permitted Encumbrances, the security interests in favor of the Holder under the Loan Documents will perfected security interests in the collateral therein described. Except to evidence Permitted Encumbrances, no financing statement or similar instrument which names Borrower as debtor or relates to any of its property, has been filed in any state or other jurisdiction and remains unreleased, and Borrower has not signed any financing statement or similar instrument or Mortgage and Security Agreement authorizing the secured party thereunder to file any such financing statement or similar instrument.

I. **Default.** No event has occurred and is continuing which with the lapse of time or the giving of notice would constitute an Event of Default under this Agreement or any of the other Loan Documents, and Borrower to its knowledge has not committed or suffered to exist any default or any circumstance which with notice, lapse of time, or both, would constitute a material default under the terms and conditions of any trust, debenture, indenture, LMC Note, bond, instrument, mortgage, lease, agreement, order, decree, or judgment to which Borrower is a party or by which it or its assets may be bound or affected.

J. **Tax Returns.** All tax returns or reports of Borrower required by law have been filed, and all taxes, assessments, contributions, fees and other governmental charges (other than those presently payable without penalty or interest and those currently being contested in good faith and against which adequate reserves have been established) upon Borrower, or its assets, properties or income, which are payable, have been paid.

K. **Litigation.** Except as disclosed in writing by the Borrower to the Issuer and the Holder, there are no actions, suits or proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower before any court or before any Governmental Authority which might result in any material adverse change in the operations, business, property, assets or condition (financial or otherwise) of the Borrower; and to the best of its knowledge, the Borrower is not in default with respect to or under any applicable statute, rule, writ, injunction, decree, order or regulation of any Governmental Authority which might have consequences that would materially and adversely affect the operations, business, property or assets of the Borrower.

L. **Full Disclosure.** No information, exhibit, memorandum, or report (excluding estimated future operating results) furnished by Borrower in connection with the Loan contains any material misstatement of fact, or omits to state any fact necessary to make the statements contained therein not materially misleading, and all estimated future operating results, if furnished, were prepared on the basis of assumptions, data, information, tests or other conditions believed to be valid or accurate or to exist at the time such estimates were prepared and furnished. To Borrower's knowledge, there presently exists no fact or circumstance relative to Borrower, whether or not disclosed, which is presently anticipated to have a material adverse effect upon the business, operations, financial condition, properties or prospects of Borrower or the ability of Borrower to fully perform its respective obligations under the Loan Documents.

M. **Contracts of Surety.** Except for the endorsements of Borrower of negotiable instruments for deposit or collection in the ordinary course of business, Borrower is not a party to any contract of surety.

N. **Licenses.** All necessary permits, licenses, consents and permissions necessary for the Project have been obtained or, to the knowledge of the Borrower, can be obtained without unreasonable delay or burden.

O. **Compliance with Law.** Borrower is in substantial compliance with all applicable requirements of law and of all Governmental Authorities noncompliance with which would have a materially adverse effect upon the business, operations, financial condition, properties or prospects of Borrower.

P. **Force Majeure.** Neither the business nor the properties of Borrower are presently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty materially adversely affecting the business, operations, financial condition, properties or prospects of Borrower.

Q. **Margin Stock.** Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Loan will be used, either directly or indirectly, for the purpose, whether immediate, incidental or remote, of purchasing or carrying any margin stock or of extending credit to others for the purpose of purchasing or carrying any margin stock, and Borrower shall furnish to the Holder, upon its request, a statement in conformity with the requirements of Federal Reserve Board Form U-1 referred to in Regulation U. Further, no part of the proceeds of the Loan will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulations T, U or X of the Board of Governors.

R. **Insolvency.** Borrower is not "insolvent" within the meaning of that term as defined in the Federal Bankruptcy Code and Borrower is able to pay its debts as they mature.

S. **Regulation.** Borrower is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or a "holding company" or an "affiliate of a holding company" or a "subsidiary of a holding company" within the meanings of the Public Utility Holding Company Act of 1935, as amended.

T. **Zoning and Permits.** The acquisition, construction, installation and equipping of the Project will comply with all applicable zoning, planning, building, health, Environmental Laws and other laws and regulations of the Governmental Authorities having jurisdiction of the Project. The Project Site is properly zoned for its intended purpose and Borrower has obtained all necessary permits or, to the knowledge of the Borrower, such permits can be obtained without unreasonable delay or burden, from federal, state and local governments related to the construction and use of the Project.

U. **Conformance with Act.** To the best of its knowledge, the acquisition, construction, installation and equipping of the Project as well as its intended use and operation are in conformance with the purposes and provisions of the Act.

V. **Disposal of Project.** Except as otherwise provided herein, it is not anticipated by the Borrower that the Project will be sold or otherwise disposed of, in whole or in part, prior to payment in full of the Bonds.

W. **General.** All statements contained in any certificate or financial statement delivered by or on behalf of Borrower to the Holder under any Loan Document shall constitute representations and warranties made by Borrower hereunder.

## ARTICLE V.

### **PARTICULAR COVENANTS OF THE BORROWER**

5.1. **Negative Covenants.** Until the Obligations have been fully and finally paid and performed, without the prior written consent of the Holder, the Borrower shall not:

A. **Dispose of Property.** Sell, transfer, lease or otherwise dispose of any of the property financed with the proceeds from the sale of the Bonds or discount with or without recourse, any of its accounts, except sales from inventory in the ordinary course of business.

B. **Further Encumber.** Except for Permitted Encumbrances, create or suffer to exist any mortgage, pledge, lien or other encumbrance upon the Project or any of its other properties or assets, real or personal, tangible or intangible, whether now owned or hereafter acquired.

C. **Merge, Etc.** Enter into any consolidation or merger with, or acquisition of, any Person or any substantial portion of its assets.

**5.2. Affirmative Covenants.** Until the Obligations have been fully and finally paid and performed, unless excepted by the Holder in advance, the Borrower shall:

A. **Consent to Assignments to Holder.** Acknowledge and consent to the pledge and assignment of the LMC Note and the rights of the Issuer under this Agreement (other than rights of the Issuer to be indemnified pursuant to Article VIII, to be protected by insurance pursuant to Section 5.2.G, which rights the Issuer has reserved and not assigned to the Holder) to the Holder, who may enforce the rights, remedies and privileges granted to the Issuer hereunder.

B. **Further Assurances.**

(i) Execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers and assurances as the Issuer or the Holder reasonably may require for the better assuring, conveying, securing, assigning and confirming unto the Issuer and the Holder all and the singular of the Project as now or hereafter constituted.

(ii) Cause all right, title and interest of the Borrower in and to all improvements, betterments, renewals, substitutions and replacements of the Project, or any part thereof, hereafter by the Borrower immediately upon such acquisition, construction, installation and equipping without any further securing, conveyance or assignment, to become and be part of the Project and shall be subject to the lien and security interest of the Mortgage and Security Agreement as fully and completely and with the same effect as though now owned by the Borrower, but at any and all times the Borrower will execute and deliver to the Issuer any and all such further assurances, conveyances or assignments therefor and other instruments with respect thereto as the Issuer and the Holder may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of the Mortgage and Security Agreement.

C. **Financial Reporting.**

(i) As soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year, deliver to Holder consolidated annual

Financial Statements of the Borrower, including a balance sheet, statement of income and retained earnings and a statement of cash flows, with accompanying note and footnote disclosures to financial statements, all prepared on an audited basis by an independent certified public accountant in accordance with standard accounting practices on a basis consistent with prior years unless specifically noted thereon together with such other information as the Holder may from time to time reasonably request.

D. **Good Standing.** Maintain its existence, good standing, and its right to do business in the Commonwealth of Kentucky.

E. **Taxes and Other Charges.** Pay and discharge all taxes, assessments, judgments, orders, and governmental charges or levies imposed upon it or on its income or profits or upon its property prior to the date on which penalties attach thereto and all lawful claims which, if unpaid, may become a lien or charge upon the property of Borrower, provided that Borrower shall not be required to pay any tax, assessment, charge, judgment, order, levy or claim, if such payment is being contested diligently, in good faith, and by appropriate proceedings which will prevent foreclosure or levy upon its property and adequate reserves against such liability have been established.

F. **Maintenance and Repair of Project.** At its own cost and expense, keep the Project and all its other properties and assets in good repair and order, reasonable wear and tear excepted, and in as reasonably safe condition as the operation thereof will permit and will make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary as well as extraordinary, and foreseen as well as unforeseen, and will make all necessary replacements or renewals required for the safe operation thereof.

G. **Insurance.** Maintain in full force and effect Builder's Risk and public liability insurance, worker's compensation insurance, casualty insurance policies and other such types of insurance as may be required with coverages and with such companies as are customarily maintained by companies engaged in business similar to that of Borrower. Each such policy covering properties of Borrower pledged as collateral to the Holder shall have a loss payable clause in favor of the Holder, its parent and affiliates, successors and assigns, Holder, its parent and affiliates, successors and assigns shall be named as an Additional Insured, and a copy of each policy, accompanied by a certificate of coverage issued by the insurance carrier, shall be delivered to the Holder. Each policy shall stipulate that the insurance cannot be canceled or materially modified without thirty (30) days' prior written notice to the Holder.

H. **Books and Records.** Keep proper books of account in which full, true and correct entries will be made of all dealings and transactions of and in relation to the business and affairs of Borrower, and, at all reasonable times, and as often as the Holder may request, permit authorized representatives of the Holder to (a) have access to the premises and properties of Borrower and to the records relating to the operations of Borrower; (b) make copies of or excerpts from such records; (c) discuss the affairs, finances and accounts of Borrower with and be advised as to the same by the chief executive and financial officers of Borrower; and (d) audit and inspect such books, records, accounts, memoranda and correspondence at all reasonable times, to make such abstracts and copies thereof as the Holder may deem necessary.

I. **Reports.** File, as appropriate, on a timely basis, annual reports, operating records and any other reports or filings required to be made with any Governmental Authority.

J. **Licenses.** Maintain in full force and effect all operating permits, licenses, franchises, and rights used by Borrower in the ordinary course of business.

K. **Compliance with Law.** Comply with all present and future laws, ordinances, orders, decrees, rules, regulations and requirements of every duly constituted Governmental Authority and the officers thereof, including, without limitation, ERISA and all Environmental Laws.

L. **Obligations Under the Loan Documents.** Pay and perform in a timely manner all of its obligations under those Loan Documents to which Borrower is a party.

M. **Completion of the Project.**

(i) Make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper, for the constructing, installing and equipping of the Project, to the extent permitted by law.

(ii) Acquire, construct, install and equip the Project with all reasonable diligence and with all applicable Governmental Authorities and all applicable restrictive covenants, free and clear of all uninsured liens or claims of liens for Materials supplied or work performed in connection therewith on or before the Completion Date.

(iii) Evidence the Completion Date to the Holder and the Issuer by a Completion Certificate signed by the Borrower stating that, (except for amounts retained by the Holder at Borrower's direction for any Project Costs not then due and payable or being contested in good faith) (i) the acquisition, construction, installation and equipping of the Project has been completed and any and all labor, services, materials and supplies used in such acquisition, construction, installation and equipping have been paid for; and (ii) all other facilities necessary in connection with the Project have been acquired, constructed, installed and equipped and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**5.3. Covenants Regarding Tax-Exempt Status.**

A. **Tax-Exempt Status of the Bonds.** The Borrower covenants and agrees that:

(i) It will not take any action which will cause or fail to take any action which will prevent the interest on the Bonds to become includable in the gross income for federal income tax purposes of the Holder so long as any portion of the Bonds remains outstanding; provided, that the Borrower shall not have violated this covenant if the interest



on the Bonds becomes taxable to a person who is a "substantial user" of the Project or a "related person" pursuant to the provisions of Section 147(a) of the Code.

(ii) It is the intention of the parties hereto that interest on the Bonds shall be and remain excludable from the gross income for federal income tax purposes of the Holder, and to that end the covenants and agreements of the Borrower in this Section are for the benefit of the Holder of the Bonds.

(iii) One hundred percent (100%) of the Loan proceeds will be paid for the acquisition of the Project within eighteen (18) months of the Closing Date as follows: at least fifteen percent (15%) of such proceeds will be paid for the acquisition of the Project within six (6) months of the Closing Date; at least sixty percent (60%) of such proceeds will be paid for the acquisition of the Project within twelve (12) months of the Closing Date; and one hundred percent (100%) of such proceeds will be paid for the acquisition of the Project within eighteen (18) months of the Closing Date.

(iv) In the event of a Determination of Taxability, the rate of interest payable on the unpaid principal balance of the Bonds, commencing as of the date of the occurrence of an Event of Taxability, shall be the Taxable Rate and each subsequent regularly scheduled installment of interest due shall be at the Taxable Rate.

(v) If upon the event of a Determination of Taxability, it is determined that any interest payments paid or accrued to the Holder of the Bonds prior to the date of such Determination of Taxability are includable in such Holder's gross income for federal income tax purposes, other than by reason of such Holder being a "substantial user" of the Project within the meaning of Section 147(a) of the Code, or a "related person," as defined in Section 147(a)(2) of the Code, then the Borrower shall pay to the Issuer and the Issuer shall pay, but only from such funds as are provided by the Borrower, and the Borrower shall furnish to the Issuer for payment to the Holder of the Bonds the following amounts:

(a) from the Event of Taxability to the date of the occurrence of the Determination of Taxability, an amount equal to the difference between (A) the interest that would have been payable had such interest payments been calculated at the Taxable Rate and (B) the actual amount of such interest payments, plus

(b) the amount of penalties, additions to tax, exclusive of any taxes imposed under Section 11 (or any successor provision) of the Code, and interest assessed against Holder on account of the inclusion of such interest payments in Holder's gross income for federal income tax purposes ("Additions to Tax"), plus

(c) an amount, which after the deduction of all federal, state or local taxes required to be paid by such Holder in respect of the receipt thereof (calculated at the maximum statutory rates applicable to such Holder) minus any tax benefit derived therefrom, shall be equal to the amount of any Additions to Tax that are not deductible by such Holder for federal income tax purposes.

(vi) The obligations of the Borrower under this Section shall survive the termination of this Agreement, payment of the LMC Note, prepayment of the Bonds, or any

purchase of the Bonds by or on behalf of the Borrower, notwithstanding anything to the contrary in this Agreement.

(vii) If the Issuer shall have made any payments to the Holder by reason of such paragraph (iv) or (v) above and if the Holder shall successfully claim for the taxable year in question that all or any part of the interest on the Bonds for such taxable year is excluded from the Holder's gross income for federal income tax purposes (for this purpose a claim shall be successful only upon expiration of the statute of limitations provided by Section 6501 or any successor provision of the Code with respect to such taxable year), then Holder shall pay to the Issuer for repayment to the Borrower the lesser of an amount equal to such payment under paragraph (iv) or (v) above with respect to such taxable year in question made by the Issuer with funds provided by the Borrower, or the amount of the claim allowed, plus interest recovered by the Holder on the claim allowed.

**5.4. Holder's Right to Perform Borrower's Covenants.** In the event the Borrower shall fail to (a) perform any covenant contained in Section 5.2.E hereof, (b) remove any lien, security interest, encumbrance or charge pursuant to Section 5.1.B hereof, (c) maintain the Project in repair pursuant to Section 5.2.F hereof (d) make any other payment or perform any other act required to be performed hereunder or (e) procure the insurance required by Section 5.2.G hereof, then and in each such case, the Holder, upon not less than fifteen (15) days prior written notice to the Borrower (except in the case of failure to procure insurance, in which event no notice shall be required), may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default, and any sums so advanced by the Holder shall be repayable by the Borrower on demand and shall bear interest at the Default Rate.

**5.5. Waiver of Covenants.** The covenants of the Borrower contained in this Article V, or any of them, may be waived by the Holder in its sole discretion; provided however, the covenants contained in Section 5.3 shall not be waived by the Holder without the prior receipt of an opinion of Bond Counsel that such waiver will not result in the interest on the Bonds becoming includable in the gross income for the federal income tax purposes of any Holder.

## ARTICLE VI.

### **DAMAGE, CONDEMNATION AND LOSS OF TITLE**

**6.1. Damage.** The Borrower agrees to notify the Holder as soon as practical (i) in the case of damage to the Project estimated to exceed Twenty-Five Thousand Dollars (\$25,000) resulting from fire or other casualty; or (ii) upon obtaining knowledge of the institution of any proceedings for the condemnation or taking of the Project. In the event of damage or destruction to or condemnation of the Project, the proceeds of any insurance or condemnation award payable on account thereof shall be distributed in accordance with the Mortgage and Security Agreement and Borrower shall have the options thereunder.

**6.2. Other Provisions With Respect to Insurance or Condemnation Proceeds.** The proceeds of any insurance received by the Holder or the Borrower shall be deposited in a special yield restricted account created by the Escrow Agent wherein the yield on such

investment shall not exceed the yield on the Bonds. Any such proceeds not so paid to the Borrower shall be paid to the Project Fund.

ARTICLE VII.  
**CREATION OF FUNDS AND**  
**DISBURSEMENT OF PROCEEDS OF LOAN**

7.1. **Creation of Project Fund.** Upon execution of this Agreement, the Holder shall create the Project Fund with the Escrow Agent as provided in this Article.

7.2. **Deposit to the Project Fund.** Upon the sale of the Bonds, the Holder, on behalf of Issuer, shall deposit the sale proceeds into the Project Fund. Borrower agrees that Holder's extension of credit as evidenced by this Agreement shall be deemed to have been made as of the date that the sale proceeds are paid to the Escrow Agent, and the Borrower further agrees that the Escrow Agent shall not be responsible for the sufficiency of the moneys credited to the Project Fund to make the payments herein required. Subject to such control by Borrower and Holder as is provided herein, Holder and Borrower agree to employ the Escrow Agent to receive, hold, invest and disburse the moneys to be paid to the Escrow Agent pursuant to this Section, all as hereinafter provided. The Escrow Agent shall not be obligated to assume or perform any obligation of Borrower or Holder under this Agreement or any Loan Documents with respect to the Project by reason of anything contained in this Agreement. Any funds in the Project Fund will be paid to Holder or Borrower, as provided in this Agreement.

7.3. **Project Fund.**

A. The Escrow Agent shall establish a special escrow fund designated as the Project Fund (the "Project Fund"), and shall keep such fund separate and apart from all other funds and money held by it, and shall administer such fund as provided in this Agreement.

B. Any funds deposited by Holder under paragraph 7.2 hereof shall be credited to the Project Fund which shall be used in furtherance of the Project.

C. If Holder delivers to the Escrow Agent written notice of the occurrence of an event of default under this Agreement, a termination of this Agreement, then the Escrow Agent shall immediately remit to Holder the remaining balance of the Project Fund in satisfaction of the LMC Note and the Bonds.

D. The Escrow Agent shall make disbursements from the Project Fund upon receipt of and in accordance with a Written Request executed by Borrower and approved by Holder and describing the property, services or purpose for which payment is to be made and which specifies each payee and such payee's address or wire instructions and the amount to be paid.

E. Upon the Escrow Agent's receipt of a Completion Certificate, the Escrow Agent shall apply the balance remaining in the Project Fund:

(i) first, to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to Borrower and Holder; and

(ii) second, to Holder to be applied by Holder for benefit of Borrower toward the principal portion of the LMC Note next coming due and thereupon Holder shall prepare and deliver to Borrower a revised payment schedule for the LMC Note reflecting such partial prepayment of principal.

F. Holder and Borrower agree that the Project shall be completed, and all funds disbursed from the Project Fund, no later than January 31, 2011 (the "Funding Expiration Date"). Upon the Funding Expiration Date, the Escrow Agent shall apply the balance of all amounts remaining in the Project Fund, including principal and interest, as follows:

(i) first, to all reasonable fees and expenses incurred by the Escrow Agent in connection herewith as evidenced by its statement forwarded to Borrower and Holder; and

(ii) second, to Holder to be applied by Holder for benefit of Borrower toward the principal portion of the LMC Note next coming due and thereupon Holder shall prepare and deliver to Borrower a revised payment schedule for the LMC Note reflecting such partial prepayment of principal.

#### **7.4. Money in Property Acquisitions Fund; Investment.**

A. The money and investments held by the Escrow Agent under this Agreement are held for the benefit of Borrower and Holder, and such money, together with any income or interest earned thereon, shall be expended only as provided in this Agreement, and shall not be subject to any security interest for the benefit of any creditor of either Borrower or Holder.

B. Money held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent at the written direction of Borrower in Eligible Investments. Such investments shall be registered in the name of the Escrow Agent and held by the Escrow Agent. The Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving consideration for the time at which funds are required to be available.

C. The Escrow Agent shall have no discretion whatsoever with respect to the management, disposition or investment of the Escrow Account and is not a trustee or fiduciary to Borrower. Borrower acknowledges and agrees that all investments made pursuant to this section shall be for the account and risk of Borrower and any losses associated with investments shall be borne solely by Borrower. Escrow Agent shall from time to time invest and reinvest the funds held in the Escrow Account, as and when instructed by Borrower, in writing, in any one or more Eligible Investments. No investment instruction shall be made by Borrower that would cause the Agreement to be deemed an "arbitrage bond" within the meaning of Section 148(a) of the Code.

D. The Escrow Agent shall, without further direction, sell such investments as and when required to make any payment from the Project Fund. Any income received on such investments shall be credited to the Project Fund. All interest or other income earned by the funds held by the Escrow Agent hereunder shall be allocated to the Borrower and reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned from the Project Fund by the Borrower whether or not said income has been distributed to Borrower during such year. Any other tax returns required to be filed will be prepared and filed by the Holder and/or the Borrower with the IRS and any other taxing authority as required by law. The Holder and Borrower have provided the Escrow Agent with their respective fully executed Internal Revenue Service (“IRS”) Form W-8, or W-9 and/or other required documentation. The Holder and the Borrower each represent that its correct TIN assigned by the IRS, or any other taxing authority, is set forth in the delivered forms.

E. Borrower hereby grants Holder a security interest in the money and investments held by the Escrow Agent under this Agreement as collateral security for the payment and performance of all of Borrower’s obligations under this Agreement and any agreement, contract or instrument related to this Agreement. Borrower represents and warrants to Holder that the money and investments held by the Escrow Agent under this Agreement are free and clear of any liens, security interests or encumbrances other than the security interests created under this Agreement. Escrow Agent hereby acknowledges that it holds the money and investments held by the Escrow Agent under this Agreement subject to such security interest created by Borrower as bailee for Holder; provided, that Escrow Agent’s security interest in such money and investments shall be superior to Holder’s security interest therein.

#### **7.5. Escrow Agent's Authority; Indemnification.**

A. The Escrow Agent may: act in reliance upon any writing, notice, certificate, instruction, instrument or signature which it, in good faith, believes to be genuine; assume the validity and accuracy of any statement or assertion contained in such a writing, notice, certificate, instruction or instrument; and assume that any person purporting to give any such writing, notice, certificate, instruction or instrument in connection with the provisions hereof has been duly authorized to do so. Except as expressly provided otherwise in this Agreement, the Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form of, the manner of execution of, or the validity, accuracy or authenticity of any writing, notice, certificate, instruction or instrument deposited with it, nor as to the identity, authority or right of any person executing the same. The Escrow Agent shall not be liable for any action taken, suffered or omitted to be taken by it except to the extent that a final adjudication of a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of any loss to either Party. The Escrow Agent’s duties hereunder (including, without limitation, its duties as to the safekeeping, investment and disbursement of moneys in the Project Fund) shall be limited to those specifically provided herein.

B. Borrower and Holder jointly and severally shall indemnify, defend and save harmless the Escrow Agent from any and all claims, liabilities, losses, damages, fines, penalties and expenses (including out-of-pocket and incidental expenses and fees and expenses

of in house or outside counsel) ("Losses") arising out of or in connection with (i) its execution and performance of this Agreement, except to the extent that such Losses are due to the gross negligence or willful misconduct of the Escrow Agent; or (ii) its following any instructions or other directions from Borrower or the Holder, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The provisions of this paragraph 7.5 shall survive the termination of this Agreement and the resignation or removal of the Escrow Agent for any reason. The indemnifications set forth herein are intended to and shall include the indemnification of all affected agents, directors, officers and employees of the Escrow Agent. In no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

C. If Borrower or Holder disagree about the interpretation of this Agreement, about their rights and obligations under this Agreement, or about the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of, nor have any requirements to comply with, the terms and conditions of any other agreement, instrument or document between Borrower and Holder, in connection herewith, if any, nor shall the Escrow Agent be required to determine if any person or entity has complied with any such agreements, nor shall any such obligations of the Escrow Agent be inferred from the terms of such agreements, even though reference thereto may be made in this Agreement. In the event of any conflict between the terms and provisions of this Agreement, those of the Loan Documents, any schedule or exhibit attached to this Agreement, or any other agreement among the Parties, the terms and conditions of this Agreement shall control. Holder and Borrower agree to pursue any redress or recourse in connection with any dispute without making the Escrow Agent a party to the same. Borrower shall pay all costs, including reasonable attorneys' fees, in connection with such action. The Escrow Agent shall be fully protected in suspending all or any part of its activities under this Agreement until a final judgment in such action is received.

D. The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of facts or errors of judgment, or for any acts or omissions of any kind unless caused by the Escrow Agent's gross negligence or willful misconduct. None of the provisions contained in this Agreement shall require the Escrow Agent to use or advance its own funds in the performance of any of its duties or the exercise of any of its rights or powers hereunder.

E. In the event that any of the Project Fund shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Escrow Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person,

entity, firm or corporation, by reason of such compliance notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

G. The Escrow Agent shall not be liable to any other party for losses due to, or if Escrow Agent is unable to perform its obligations under the terms of this Escrow Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

**7.6. Change of Escrow Agent.**

A. Upon agreement of the parties hereto, a national banking association or a state bank having capital (exclusive of borrowed capital) and surplus of at least \$10,000,000.00, qualified as a depository of public funds, may be substituted to act as Escrow Agent under this Agreement. Such substitution shall not be deemed to affect the rights or obligations of the parties hereto. Upon any such substitution, the Escrow Agent agrees to assign to such substitute Escrow Agent all of its rights under this Agreement.

B. The Escrow Agent or any successor may at any time resign by giving mailed notice to Borrower and Holder of its intention to resign and of the proposed date of resignation, which shall be a date not less than thirty (30) days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment of a successor Escrow Agent has been approved by Borrower and Holder.

C. The Escrow Agent may appoint an agent to exercise any of the powers, rights or remedies granted to the Escrow Agent under this Agreement, to hold title to property or to take any other action which may be desirable or necessary hereunder.

D. Any corporation, association or other entity into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or otherwise transfer all or substantially all of its escrow business or any corporation, association or other entity resulting from any such conversion, sale, merger consolidation or other transfer to which it is a party, ipso facto, shall be and become successor escrow agent hereunder, vested with all other matters as was its predecessor, without the execution or filing of any instrument or any further act on the part of the parties hereto, notwithstanding anything herein to the contrary.

**7.7. Administrative Provisions.** The Escrow Agent shall keep complete and accurate records of all money received and disbursed under this Agreement, which shall be available for inspection by Borrower or Holder, or the agent of either of them, at any time during regular business hours.

**7.8. Records.** The Escrow Agent shall make disbursements pursuant to paragraph 7.3 of this Agreement and shall keep and maintain adequate records pertaining to the Project Fund and all payments therefrom. After the Project has been completed and the Completion Certificate is or has been filed as provided in Section 5.2 (M) hereof, the Escrow Agent shall file an accounting thereof with the Issuer and the Borrower.

ARTICLE VIII.  
**INDEMNITY**

- 8.1. Indemnification by Borrower.** Borrower releases the Issuer and its attorneys, agents and employees, and the Holder and any of its officials, officers, employees, members, independent contractors or agents (hereinafter the "Indemnified Parties") from, agrees that the Indemnified Parties shall not be liable for, and agrees to protect, defend, indemnify and hold harmless the Indemnified Parties from and against, any loss or damage to property, or any injury to or death of any person, that may be occasioned by any cause whatsoever pertaining to the Project, or the use thereof or arising from any act or failure to act by the Borrower or any of the Borrower's agents, contractors, servants, employees, or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm or limited liability company occurring during the term of this Agreement, or against all losses, claims, costs, damages, liabilities and expenses which may incur in connection with or arising out of the direct or indirect application of the proceeds of the Loan hereunder, and from and against all costs, liabilities and expenses incurred in or in connection with any claim, action or proceeding brought thereon; provided, however, that the indemnity in this paragraph shall be effective only to the extent of any loss in excess of amounts paid to the Indemnified Parties from any insurance carried with respect to the loss sustained. The Borrower further agrees to protect, defend, indemnify and hold harmless the Indemnified Parties against and from any and all costs, liabilities, expenses and claims arising from any breach or default on the part of the Borrower in the performance of any covenant or agreement on the part of the Borrower to be performed pursuant to the terms of any of the Loan Documents, or in connection with the issuance of the Bonds and the furnishing of information concerning the Project, the Borrower, their financial status or other matters relating to the Borrower. In case any action or proceeding is brought against the Indemnified Parties by reason of any such claim, the Borrower upon notice from the Indemnified Parties covenants to resist or defend such action or proceeding at the Borrower's expense. None of the Indemnified Parties shall settle or compromise such claim, action or proceeding without the written consent of the Borrower, as applicable, which shall not be unreasonably withheld, if there exists no Event of Default by the Borrower as defined in Section 11.1 hereof. Nothing contained in this Section, however, shall require the Borrower to indemnify the Indemnified Parties from any cost, liability, expense, loss or claim arising out of or resulting from the willful misconduct or gross negligence of any such Person.
- 8.2. Form 8038.** The Borrower shall furnish the Issuer and Bond Counsel with information required to complete Internal Revenue Service Form 8038 with respect to the Bonds, and the Borrower shall protect, defend, indemnify and hold harmless the Issuer, Bond Counsel, and any Holder of the Bonds, against all consequences of any material misrepresentation in or material omission from such Form 8038.
- 8.3. No Liability to Issuer.** No covenant or agreement contained in the Bonds or this Agreement shall be deemed to be a covenant or agreement of the Issuer or of any officer or employee of the Issuer in his or her individual capacity, and neither the Issuer nor any officer or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.



- 8.4. **Survival.** The indemnity set forth herein shall be in addition to any other Obligations of Borrower to the Holder or amounts due hereunder to the Issuer or at common law or otherwise, and shall survive any termination of this Agreement, and the payment of all Obligations.

ARTICLE IX.  
**GENERAL PROVISIONS**

- 9.1. **Limited Obligation of Bonds.** The Bonds, together with interest thereon, are not a general obligation of the Issuer or the Commonwealth of Kentucky but are a special, limited obligation payable solely from the Revenues and other amounts derived from or paid pursuant to this Agreement, the LMC Note and the other Loan Documents. Neither the Commonwealth of Kentucky nor the Issuer shall be obligated to pay the principal of the Bonds or the interest thereon or other costs incident thereto except from the revenues and money pledged therefor. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF KENTUCKY OR THE ISSUER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THE BONDS OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO. In case any official of the Issuer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be such official before the delivery of the Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.'
- 9.2. **Performance of Covenants by Issuer.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions required to be performed by it and contained in this Agreement, in any and every Bond executed and delivered hereunder, and in all of its proceedings pertaining hereto. The Issuer covenants that it is duly authorized under the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Agreement, to assign its rights hereunder and under the LMC Note in the manner and to the extent herein set forth; and that all action on its part for the issuance of the Bonds and the execution and delivery of this Agreement has been duly and effectively taken.
- 9.3. **Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver or to cause to be done, executed, acknowledged and delivered, such agreements supplemental hereto and such further acts, instruments and transfers as the Holder may require for the more effectual assignment unto the Holder of all the Revenues payable under this Agreement, and any other income and other moneys assigned hereby to the payment of the principal of, premium, if any, and interest on the Bonds.
- 9.4. **Recordation.** The Issuer covenants that it will cooperate to the end that this Agreement, the Mortgage and Security Agreement, or any financing statements and all supplements thereto, and other instruments as may be required from time to time to be kept, will be recorded or filed at Borrower's expense, or otherwise placed of record in appropriate governmental offices, as may from time to time be required by law in order fully to preserve and protect the security of the Holder of the Bonds, and the rights of the Holder hereunder.

**9.5. Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Registrar may authenticate and deliver a new Bond of the same series and like tenor in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such lost, stolen or destroyed Bond, upon the Holder's furnishing to the Issuer evidence of such loss, theft or destruction satisfactory to the Issuer, together with indemnity satisfactory to it. In the event any such Bond shall have matured, the Issuer may, instead of issuing a duplicate Bond, pay the same without surrender thereof. The Issuer may charge the Holder of such Bond its reasonable fees and expenses in this connection.

**9.6. Registration, Exchange and Transfer.**

A. **Registration.** The Issuer hereby appoints the Borrower as its agent to act as Registrar (and authenticating agent) as such the Borrower shall keep books for the registration of Bonds and for the registration of transfers of Bonds as provided in this Agreement. At reasonable times and under reasonable regulations established by the Registrar the Register may be inspected and copied by the Borrower or by any Holder (or legal representative thereof).

B. **Exchange.** Bonds initially authenticated hereunder may, at the option of the Holder thereof, be exchanged for Bonds of different denominations. Any Bonds delivered in exchange for the Bonds initially authenticated hereunder shall have the same interest rate, be in denominations authorized by this Agreement, and be equal in aggregate principal amounts and maturities to the unpaid aggregate principal amounts and maturities of the Bonds to be exchanged at the time of the exchange. Bonds delivered in exchange for the Bonds authenticated hereunder shall be further exchangeable, upon the same terms and conditions as the Bonds authenticated hereunder.

C. **Transfer.** The transfer of any Bond issued pursuant to the provisions of this Agreement shall be registered only upon the books kept for the registration of the Bonds and only upon surrender of the Bonds to the Registrar together with an assignment duly executed by the Holder or his legal representative in the form provided with the Bonds attached thereto.

D. **Delivery and Charges in Connection with Exchange or Transfer of Bonds.** In all cases in which Bonds shall be exchanged or the transfer of Bonds shall be registered hereunder, the Issuer shall execute and the Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Agreement. The Registrar shall provide and shall be responsible for determining all necessary and appropriate information in regard to the transfer or exchange of Bonds, including, without limitation, calculations of the denominations and maturities of all such Bonds. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Registrar. The Issuer may make a charge to the Holder for every such exchange or registration of transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or registration of transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the Issuer nor the Registrar shall be required to make any such exchange or registration of transfer of Bonds during the fifteen (15) days immediately preceding an Interest Payment Date on the Bonds, or, in the case of any proposed

redemption of Bonds, during the fifteen (15) days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof have been selected for redemption.

E. **Ownership.** As to any Bond, the Person in whose name the Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal and redemption premium, if any, on any such Bond and the interest thereon shall be made only to or upon the order of the Holder or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

9.7. **Destruction of Bonds.** Whenever any Bonds shall be delivered to the Registrar for cancellation thereof pursuant to this Agreement, upon payment of the principal of, premium, if any, or amount of interest represented thereby or for replacement, such Bonds shall be promptly canceled and destroyed by the Registrar and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Registrar to the Issuer and the Borrower.

9.8. **Cancellation.** All Bonds which have been redeemed, paid or received by the Registrar for exchange and which have come due while held in safekeeping shall not be reissued but shall be canceled and destroyed by the Registrar. If less than the full principal amount of a Bond shall be called, the Issuer shall execute and the Registrar shall authenticate and deliver, upon the surrender of such Bond at the principal office of the Registrar, without charge to the Holder thereof, for the unredeemed balance of the Bond so surrendered, a Bond of like series and interest rate.

9.9. **Existence of Issuer.** The Issuer covenants that it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement and the other Loan Documents to which it is a party by any successor public body; will use its best efforts to maintain, preserve and renew all the rights, powers, privileges and franchises owned by it; and will comply with all valid acts, rules, regulations and orders of any legislative, executive, judicial or administrative body applicable to the Issuer in connection with the Project and the Bonds.

9.10. **Rights Under Agreement.** The Issuer agrees that the Holder in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to this Agreement for and on behalf of the Holder, whether or not the Issuer is in default hereunder.

9.11. **Tax Covenants.** The Issuer shall perform all acts and things required by law to assure that interest paid on the Bonds remains excludable from the gross income of the Holder for federal income tax purposes. The Issuer shall take any action, and shall observe and not violate applicable provisions of the Code and regulations promulgated thereunder or applicable thereto, which action, failure to observe or violation would cause any of the Bonds to be "arbitrage bonds" for purposes of Section 148 of the Code. The Issuer shall be entitled to receive and to rely upon an opinion of Bond Counsel as to the conformity with or compliance with the requirements of this Paragraph 9.11 and that the representations and

warranties contained in paragraph 4.1 are true and correct on the date of such disbursement request or such receipt, as the case may be.

ARTICLE X.  
**ADDITIONAL BONDS**

**10.1. Parity Bonds.** The Issuer or any political subdivision duly organized and validly existing under the laws of the Commonwealth with the power to issue bonds under the Act, upon the request of LMC, may issue Additional Bonds but only if no Event of Default has occurred and is continuing under this Agreement and such Additional Bonds rank on a parity as to security and source of payment with the Bonds and the 2002 Bonds. Such issuer may issue such Additional Bonds upon the following conditions and subject to the following restrictions:

A. Additional Bonds may be issued, if necessary to complete the Project according to the present plans and specifications, but before such Additional Bonds may be issued, the Architect for the Project must certify as to the reason for the deficiency and that it is necessary for such Additional Bonds to be issued in order to complete the Project according to such plans and specifications.

B. If the Plant shall require renovation, replacement or reconstruction and/or shall prove to be of insufficient capacity to supply all of the steam and chilled water and related service requirements of the User Institutions, and to supply all of the steam and chilled water and related service requirements of all additional parties to the Contract, as certified by LMC, such issuer may issue Additional Bonds for the purpose of financing the cost of constructing and acquiring such additions, extensions, and improvements, if, but only if, all of the User Institutions, and any new parties to the User Contract, agree to be bound to use the steam and chilled water and related services from the Plant as renovated, replaced, reconstructed or extended, and to pay for such usage which will be sufficient to pay the principal and interest on all Bonds Outstanding.

C. Interest payment dates with respect to any such Additional Bonds issued in conformity herewith shall be payable on the same interest payment dates in each year, and the principal of such Additional Bonds shall mature on the same principal maturity dates in each year in which any such principal is caused to mature.

ARTICLE XI.  
**PREPAYMENT OF LMC NOTE AND REDEMPTION OF BONDS**

**11.1. Optional Prepayment of Bonds.** The Bonds are subject to redemption or prepayment, as a whole or in part.

**11.2. Prepayment Provisions.** Provided that no Event of Default has occurred or is continuing, upon Borrower providing Holder at least 20 days prior written notice for any prepayment, Issuer, Borrower, and Holder agree that Borrower may elect to prepay its obligations under the LMC Note by paying to Holder on the Principal Payment Date (the "Prepayment Date") the total of the following: (a) all accrued installment payments, interest, taxes, late charges and other amounts then due and payable under this Agreement; plus (b) the

remaining principal balance payable by Borrower under the LMC Note as of said Prepayment Date (hereinafter, the "Principal Balance").

ARTICLE XII.  
**NO TRUSTS CREATED**

**12.1. No Trusteeship.** Notwithstanding anything to the contrary herein, no trusteeship is created by this Agreement and no implied covenants, obligations or trusts shall be imposed upon or read into this Agreement against the Holder.

ARTICLE XIII.  
**EVENTS OF DEFAULT AND REMEDIES THEREFOR**

**13.1. Events of Default.**

A. **Events of Default Defined.** The occurrence and continuance of any of the following events shall constitute an "Event of Default" hereunder:

(i) any representation or warranty made by or on behalf of Borrower under or in connection with any Loan Document shall be false in any material respect as of the date on which made;

(ii) failure of Borrower to pay any installment of interest or principal on any LMC Note or to pay any other Obligation when the same shall become due and payable, whether at maturity, redemption or by acceleration or otherwise;

(iii) the breach of any of the covenants contained herein and not cured within sixty (60) days after written notice from the Holder to the Borrower specifying such breach;

(iv) the breach by Borrower of any other terms or provisions of the Loan Documents, other than a breach which constitutes an Event of Default under paragraphs 13.1A(i),(ii) or (iii) above, unless such breach is cured within sixty (60) days after written notice from Holder to Borrower specifying such breach;

(v) the failure of Borrower to pay any other indebtedness (including, without limitation, any indebtedness to the Holder regardless of the amount), when due or within any applicable grace or cure period or the default by Borrower in the performance of any other term, provision or condition contained in any agreement under which any such indebtedness was created or is governed, the effect of which is to permit the Holder of such indebtedness to cause such indebtedness to become due prior to its stated maturity, unless such default is waived in writing by the Holder; or any such indebtedness shall be validly declared to be due and payable or required to be prepaid (other than by a regularly scheduled payment) prior to the stated maturity thereof;

(vi) Borrower shall (a) have an order for relief entered with respect to it under the Federal Bankruptcy Cod and such proceeding continues undischarged or unstayed for a period of sixty (60) consecutive days; (b) not pay, or admit in writing its inability to pay, its

debts generally as they become due; (c) make an assignment for the benefit of creditors; (d) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for Borrower or any substantial part of its property, (e) institute any proceeding seeking an order for relief under the Federal Bankruptcy Code or seeking to adjudicate Borrower bankrupt or insolvent, or seeking dissolution, winding up, liquidation, or reorganization of Borrower, under any law relating to bankruptcy, insolvency or reorganization or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (f) suspend operations as presently conducted or discontinue doing business as an ongoing concern;

(vii) without the application, approval or consent of Borrower, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Borrower or any substantial part of its property and such appointment continues undischarged or unstayed for a period of sixty (60) consecutive days;

(viii) any Governmental Authority shall condemn, seize or otherwise appropriate, or take custody or control of all or any substantial portion of the property of Borrower;

(ix) Borrower shall fail within sixty (60) days after written notice from the Holder to pay, bond or otherwise discharge any judgment or order for the payment of money which is not stayed on appeal, or any attachment, levy or garnishment is issued against any collateral for the Obligations;

(x) the Project or any part thereof shall be condemned or damaged by fire or other casualty in such manner as to preclude, in the Holder's sole judgment, the completion of the Project by the Completion Date; or

(xi) a default by Borrower under any of the documents governing, evidencing or securing any indebtedness owed to the Holder and such default is not cured within any applicable grace or cure period provided therein.

B. **Notice.** If any Event of Default shall occur, the Borrower shall within five (5) days after knowledge of such event, give written notice of such Event of Default to the Issuer and the Holder.

C. **Remedies of the Holder.** During the occurrence and continuance of any Event of Default hereunder (any reference to "the occurrence and continuance of an Event of Default" or to "the occurrence of an Event of Default" in this Section shall assume that any applicable cure period provided for in this Agreement has expired), the Holder shall have the rights and remedies hereinafter set forth, in addition to any other remedies provided herein or provided by law:

(i) **Terminate Obligation to Disburse Funds.** Upon the occurrence of an Event of Default and at any time hereafter, Holder at its option, without notice and without waiving any right or remedy available to it by law or under any of the Loan Documents or otherwise, may terminate its obligation to disburse any funds hereunder.

(ii) **Acceleration of Maturity of LMC Note; Waiver of Event of Default and Rescission of Acceleration.** Upon the occurrence of an Event of Default, the Holder may declare the principal of the LMC Note (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and upon any such declaration the principal of the LMC Note and the interest accrued thereon shall become and be immediately due and payable, anything in the LMC Note and in this Agreement to the contrary notwithstanding, and commencing on the date of occurrence of the Event of Default, all amounts due under the LMC Note shall bear interest at the Default Rate, all without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives. Upon the occurrence of an Event of Default and a declaration of acceleration of all amounts due hereunder as provided herein, interest shall accrue on such amount at the Default Rate until paid. This provision, however, is subject to the condition that if, at any time after the principal of the LMC Note and the interest become due and payable and prior to the date of any sale of any part of the Project pursuant to this Article, all arrears of interest, if any, upon the LMC Note and the expenses of the Holder and the Issuer shall be paid by the Borrower, and every other default in the observance or performance of any covenant, condition or agreement contained in the LMC Note or this Agreement shall be made good, or be secured, to the satisfaction of the Holder, or provisions deemed by the Holder to be adequate shall be made therefor, then and in every such case the Event of Default by reason of which the principal of the LMC Note and the interest accrued thereon shall have been so declared and become due and payable shall be considered waived by the Holder, and such declaration and its consequences shall be considered annulled and rescinded; but no such waiver, rescission or annulment shall extend to or affect any subsequent Event of Default. Any declaration of acceleration of maturity upon the occurrence of an Event of Default or waiver of an Event of Default and rescission of acceleration in connection with the LMC Note shall be deemed to be a declaration or waiver with respect to the corresponding Bonds.

(iii) **Holder May Enter and Take Possession, Operate and Apply Income.** The Holder may, personally or by its agents or attorneys, to the extent permitted by law and the Mortgage and Security Agreement, enter into and upon the Borrower's premises and together with any prior lienholder or any lienholder holding a parity lien and take possession of all or any part of the Project and each and every part thereof, and having and holding the same, may use, operate, manage and control the Project for any lawful purpose. The Holder together with any prior lienholder or any lienholder holding a parity lien at the expense of the Borrower either by purchase, repairs or construction, may from time to time maintain and restore the Project, and may insure and reinsure the same; and may make all necessary or proper repairs, renewals, and replacements, and alterations, additions, betterments and improvements thereto and thereon; and may collect and receive all earnings, revenues, rents, issues, profits and income of the same and every part thereof; and after deducting the expenses of operations, maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and all payments which may be made for taxes, assessments, insurance and other proper charges upon the Project or any part thereof, the Holder shall apply the moneys arising as aforesaid as follows:

(a) in case the principal of the LMC Note shall not have become due, first, to the payment of the installments of principal and interest thereon, when and as the same shall become payable, and second, to the payment of any other sums required to be paid by the Borrower under this Agreement; or

(b) in case the principal of the LMC Note shall have become due by acceleration or otherwise, in the order of priorities and amounts set forth in paragraph 13.2; or

(c) in case the principal of the LMC Note shall not have become due and there exists no default in the payment of any installments of interest or principal on the LMC Note, then to the remedying of any other Event of Default then existing.

Any amount remaining after satisfying the provisions of (a), (b) or (c) of this Section 13.1.C(iii), respectively, shall be paid by Holder to the Borrower.

(iv) **Right to Bring Suit.** The Holder, with or without entry, personally or by attorney, may in its discretion, proceed to protect and enforce its rights by a suit or suits in equity or at law, whether for damages or for the specific performance of any covenant or agreement contained in the LMC Note, this Agreement or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Holder shall deem most effectual to protect and enforce any of its rights or duties hereunder; provided, however, that all costs incurred by the Holder and the Issuer under this Article shall be paid to the Holder and the Issuer by the Borrower on demand.

(v) **Right to Accelerate Other Indebtedness.** The Holder may declare all other indebtedness of Borrower to the Holder immediately due and payable and upon such declaration all such indebtedness shall become immediately due and payable and all commitments of the Holder to make further extensions of credit to Borrower shall immediately terminate without notice of any kind.

**13.2. Application of Proceeds of Sale.** The purchase money proceeds or avails of any sale of the Project pursuant to the Mortgage and Security Agreement, together with any other sums which then may be held by the Holder, under this Agreement as part of the Project or the proceeds thereof, whether under the provisions of this Article or otherwise, shall be paid and applied as provided in the Mortgage and Security Agreement.

**13.3. Payment of Defaulted Amounts on Demand of Holder.** In case the Borrower shall:

A. fail to pay any installment of interest on the LMC Note when and as the same shall become due and payable, as therein and herein expressed;

B. fail to pay the principal of the LMC Note, when and as the same shall become due and payable, whether at maturity or upon designation for prepayment or by declaration, or upon a sale of the Project pursuant to the Mortgage and Security Agreement, or otherwise;

then upon written demand of the Holder, the Borrower will pay to the Holder the whole amount which then shall have become due and payable on the LMC Note for interest or principal or both, as the case may be, and in addition thereto will pay such further amount as shall be sufficient to cover the cost and expenses of collection, including a reasonable



compensation to the Holder, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Holder hereunder.

**13.4. Holder Entitled to Appointment of Receiver.** The Borrower further covenants that upon the happening of any Event of Default and thereafter during the continuance of such Event of Default unless the same shall have been waived as hereinbefore provided, the Holder shall be entitled as a matter of right if it shall so elect, (a) forthwith and without declaring the principal of the LMC Note to be due and payable; or (b) after declaring the same to be due and payable; or (c) upon the filing of an action to foreclose the Mortgage and Security Agreement or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of the Holder to the appointment of a receiver or receivers of the Project and of all the earnings, revenues, rents, issues, profits and income thereof, with such powers as the court making such appointment shall confer and as provided in the Mortgage and Security Agreement, which may comprise any or all of the powers which the Holder is authorized to exercise by the provisions of Section 13.1.C(iv) hereof. The Borrower, if requested so to do by the Holder will consent to the appointment of any such receiver.

**13.5. Remedies Cumulative.** No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**13.6. Delay or Omission Not a Waiver.** No delay or omission of the Holder to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Agreement to the Holder may be exercised from time to time and as often as may be deemed expedient by the Holder.

**13.7. Remedies Subject to Provisions of Law and Mortgage and Security Agreement.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law or provision of the Mortgage and Security Agreement. All provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that such provisions will not render this Agreement invalid or unenforceable under any applicable law. All provisions of this Article are subject to the terms of the Mortgage and Security Agreement and may only be exercised in parity with the Trustee of the 2002 Bonds.

**13.8. Remedies Under Uniform Commercial Code.** In addition to any other remedies provided for in the Loan Documents or by law, the Holder shall have the rights of a secured party and the Borrower shall have the rights of a debtor under the Uniform Commercial Code of Kentucky (or any successor code or statute) with respect to the Project upon the occurrence and continuance of an Event of Default hereunder, subject to being exercised in parity with the Trustee of the 2002 Bonds.

ARTICLE XIV.  
**DISCHARGE**

14.1. **Satisfaction and Termination.** If the Borrower shall pay and discharge or provide, in a manner satisfactory to the Holder, for the payment and discharge of the whole amount of the principal of and interest on the LMC Note at the time outstanding, and shall pay or cause to be paid all other Obligations, or shall make arrangements satisfactory to the Holder for such payment and discharge, then and in that case all property, rights and interest hereby or under the Loan Documents conveyed or assigned or pledged shall revert to the Borrower, and the estate, right, title and interest of the Holder therein shall thereupon cease, terminate and become void, subject, however, to any other liens or encumbrances then existing in favor of the Holder; and this Agreement and the other Loan Documents, and the covenants of the Borrower contained herein and therein, shall be discharged and the Holder in such case on demand of the Borrower and at Borrower's cost and expense, shall execute and deliver to the Borrower a proper instrument or proper instruments acknowledging the satisfaction and termination of the Loan Documents, and shall convey, assign and transfer or cause to be conveyed, assigned or transferred, and shall deliver or cause to be delivered, to the Borrower, all property, including money, then held by the Holder together with the LMC Note marked paid or canceled.

ARTICLE XV.  
**MISCELLANEOUS ITEMS**

15.1. **Amendments and Supplements.** This Agreement may be amended, changed or modified only upon the written agreement of all the parties hereto.

15.2. **Assignment.** Issuer hereby transfers and assigns to Holder and Holder's successors and assigns without recourse all of Issuer's present and future right, title and interest in and to the Agreement, the Loan Payments, the Project, all related documents and any proceeds of any of the foregoing, including, without limitation, any insurance proceeds and claims against third parties, to have and to hold for its and their own use and benefit forever.

Holder may assign its rights, title and interest in and to this Agreement and/or the Project, and/or grant or assign a security interest in this Agreement and the Property, in whole or in part. Any such assignee shall have all of the rights and obligations of Holder under this Agreement. **ISSUER AND BORROWER AGREE NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH ISSUER OR BORROWER MAY HAVE AGAINST HOLDER.** Unless otherwise agreed by Borrower in writing, any such assignment transaction shall not release Holder from any of its obligations under this Agreement. No assignment or reassignment of any of Purchaser's right, title or interest in this Agreement or the Project shall be effective unless and until Borrower and Issuer shall have received a notice of assignment, disclosing the name and address of such assignee; provided, that notice from Holder to Borrower and Issuer of any assignment shall not be required if Holder assigns this Agreement to FIFTH THIRD BANK (and its successors or assigns) or any of its direct or indirect subsidiaries. Borrower and Issuer agree to acknowledge in writing any assignments if so requested.

Issuer hereby transfers and assigns to Purchaser and Purchaser's successors and assigns without recourse all of Issuer's present and future right, title and interest in and to the Agreement, the Loan Payments, the Project, all related documents and any proceeds of any of the foregoing, including, without limitation, any insurance proceeds and claims against third parties, to have and to hold for its and their own use and benefit forever.

Without approval of the Holder, Borrower shall not, directly or indirectly, (a) mortgage, assign, sell, transfer, or otherwise dispose of this Agreement or any interest therein or any portion of the Project, or (b) sublease, rent, lend or transfer possession or use of the Project or any part thereof to any party or (c) create, incur, grant, assume or allow to exist any lien on the Project or any part thereof, or (d) transfer or assign any of its obligations hereunder to any party.

**15.3. Applicable Law; Entire Understanding.** This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the Commonwealth of Kentucky. Each Party irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to jurisdiction of the courts located in the Commonwealth of Kentucky. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement. This Agreement, together with the other accompanying documents, express the entire understanding and all agreements of the parties hereto with each other, and no party hereto has made or shall be bound by any agreement or any representation to any other party which is not set forth herein or incorporated herein by reference.

**15.4. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**15.5. Severability.** In the event any clause or provision hereof shall be held to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of any such clause or provision shall not affect any of the remaining provisions hereof, and such remaining valid and enforceable provisions shall thereupon remain in full force and effect and this Agreement shall be construed as if such unenforceable or invalid provisions had not been originally contained herein.

**15.6. Time of the Essence.** Time shall be of the essence in this Agreement. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

**15.7. Approval of Bonds.** The Borrower hereby approves the issuance of the Bonds as prescribed in this Agreement and the Ordinance.

**15.8. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be

construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement or any covenants, conditions or provisions herein contained, this Agreement and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto.

**15.9.            Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Borrower and their respective successors and assigns subject to the limitations contained herein.

**15.10.            Notices.**

A. Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, by personal delivery, fax, overnight delivery, or mailed by first class mail, postage prepaid and addressed as follows:

(i) If to the Issuer, addressed to:  
Louisville/Jefferson County Metro Government, Kentucky  
c/o Mayor  
4<sup>th</sup> Floor, Metro Hall  
527 West Jefferson Street  
Louisville, Kentucky 40202

(ii) If to the Purchaser, addressed to:  
Fifth Third Bank

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_

(iii) If to the Borrower, addressed to:  
Louisville Medical Center, Inc.  
c/o Ed Dusch, General Manager  
235 Abraham Flexner Way  
Louisville, Kentucky 40202

With copy to:  
D. Randall Gibson  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

(iv) If to the Escrow Agent, addressed to:  
Fifth Third Leasing Company

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

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B. The Issuer, the Purchaser or the Borrower may from time to time by notice in writing to the others designate a different address or addresses for notice hereunder.

**15.11. All Bonds Equally and Ratably Secured; Bonds Not General Obligations of the Issuer.** All Bonds issued hereunder and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority, or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien, preference hereunder, and shall all be equally and ratably secured hereby. THE BONDS ARE SPECIAL OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM AND SECURED BY A PLEDGE OF PLEDGED REVENUES AND FUNDS PROVIDED THEREFOR UNDER THIS AGREEMENT. NEITHER THE COMMONWEALTH NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THE BONDS AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS.

**15.12. Effective Date of Agreement.** Upon issuance of the Bonds to the Purchaser, this Agreement shall be effective.

[Signature page follows]

**Approved as to form and legality:**

MIKE O'CONNELL  
JEFFERSON COUNTY ATTORNEY

\_\_\_\_\_  
James T. Carey  
Assistant County Attorney

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, KENTUCKY

By: \_\_\_\_\_  
Jerry E. Abramson, Mayor

Borrower:

LOUISVILLE MEDICAL CENTER, INC.,  
a Kentucky, nonprofit corporation

\_\_\_\_\_  
Robert Barbier, General Manager

Purchaser:

FIFTH THIRD BANK

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Escrow Agent:

FIFTH THIRD LEASING COMPANY

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

## PROMISSORY NOTE

Principal Amount: \$6,550,000

Maturity Date: May 1, 2014

FOR VALUE RECEIVED, Louisville Medical Center, Inc., a Kentucky nonprofit corporation (the "Borrower") promises to pay to the Louisville/Jefferson County Metro Government, Kentucky, a municipal corporation and de jure political subdivision, duly organized and validly existing under the laws of the Commonwealth of Kentucky, its successors and assigns (the "Issuer"), in lawful money of the United States of America and in immediately available funds, the principal sum of Six Million Five Hundred Fifty Thousand Dollars (\$6,550,000), and to pay interest on the unpaid principal amount hereof, in like money, at such office at the rates in the amount hereinafter specified and as specified in the attached Exhibit A.

This Note has been executed and delivered by the Borrower to the Issuer pursuant to that certain Bond Purchase and Loan Agreement (the "Loan Agreement"), dated July 31, 2009, among the Issuer, the Borrower, and Fifth Third Bank, a Michigan corporation, as original purchaser (the "Holder") of the Issuer's Six Million Five Hundred Fifty Thousand Dollars (\$6,550,000) aggregate principal amount Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 (the "Bonds"). Under the Loan Agreement, the Issuer will loan to the Borrower the proceeds received from the sale of the Bonds to assist in the financing and refinancing of the acquisition, construction, installation and equipping of the Project, as defined in the Loan Agreement, and the Borrower has agreed to repay such loan by making payments of principal and interest as set forth in Article III of the Loan Agreement ("Loan Payments") at the times and in the amounts set forth in this LMC Note for application to the payment of the principal of, premium, if any, and interest on the Project Bonds as and when due, or as otherwise provided in the Loan Agreement. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to the Loan Agreement and are secured by a Mortgage and Security Agreement dated July 31, 2009. The Project Bonds mature on May 1, 2014.

Terms used herein and not specifically defined herein shall have the meaning ascribed to them in the Loan Agreement.

Concurrently with the execution and delivery of this LMC Note by the Borrower to the Issuer, the Issuer is endorsing this LMC Note to the Holder, and is assigning and pledging to the Holder all of the Loan Payments pursuant to the terms of the Loan Agreement. Such assignment is made as security for the payment of the Bonds.

To provide funds to pay the principal of, premium, if any, and interest on the Bonds as and when due as above-specified, the Borrower hereby agrees to and shall make Loan Payments as follows:

A. Prior to maturity or an Event of Default, the unpaid principal balance of the Loan shall bear interest at the rate of three hundred (300) basis points over thirty (30) day LIBOR per annum based on a 360 day year with each month consisting of 30 days.

B. In consideration of and in repayment of the Loan the Borrower shall make the payments provided for herein in time and amount sufficient to pay when due all principal of and interest on the Bonds. Interest shall be due and payable semi-annually and shall be paid on May

1 and November 1 of each year beginning with the semi-annual installment due on November 1, 2009. Principal shall be due and payable annually and shall be paid on May 1 of each year beginning with the annual installment due on May 1, 2010.

C. If any installment of principal and interest provided herein become due and payable on a date other than a Banking Day, the maturity of the installment of principal or interest shall be extended to the next succeeding Banking day.

D. If any payment is not received by the Holder within ten (10) days after its due date, the Bank may assess and the Borrower agrees to pay a late fee equal to five percent (5%) of the payment. This late fee shall be in addition to and not in lieu of, any other remedy the Holder may have and is in addition to any reasonable fees and charges of any attorneys which the Holder is entitled to employ, whether authorized herein or by law.

Notwithstanding anything herein to the contrary, in the event of an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired) or after maturity, interest on the unpaid principal balance hereof shall be at the rate of \_\_\_\_% (the "Default Rate"), commencing on the date of occurrence of the Event of Default or maturity as applicable.

Installments of principal, premium, if any, and interest required hereunder shall be made by the Borrower directly to the Holder for the account of the Issuer, in lawful money of the United States of America in immediately available funds at the office of the Holder in Louisville, Kentucky. Notwithstanding any other provision of this LMC Note to the Contrary, all installments of principal and interest hereunder shall at all times be sufficient to pay the principal and interest required on the Bonds.

The payments by the Borrower to the Holder shall be deemed made by the Borrower on account of this LMC Note and receipt of such payments by the Holder shall be deemed satisfaction of the payment obligations of the Issuer under the Bonds.

This LMC Note is subject to optional prepayment at the election of the Borrower, as a whole or in part, as provided in Article XI of the Loan Agreement.

Time is of the essence with respect to the terms of this LMC Note.

This LMC Note is the LMC Note referred to in the Loan Agreement, and is entitled to the benefits, and is subject to the provisions of the Loan Agreement and the Mortgage and Security Agreement. Payment of this LMC Note is secured by the Mortgage and Security Agreement.

In case of an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired), the principal of and interest on this LMC Note may be declared immediately due and payable as provided in the Loan Agreement, along with reasonable attorney's fees and costs of collection, and without relief from valuation or appraisal laws. Upon such Event of Default, interest hereon shall be at the Default Rate.

The Borrower and all endorsers, guarantors, sureties, accommodation parties and all other parties liable or becoming liable for all or any part of the indebtedness evidenced hereby,



severally waive presentment, demand, notice, notice of dishonor, protest, notice of protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this LMC Note, and assent to the addition or release of any other party or person primarily or secondarily liable under this LMC Note.

Upon payment in full of this LMC Note, the Holder shall mark hereon "Paid in Full" and return this LMC Note to the Borrower. When this LMC Note shall be deemed paid in full, the Bonds shall be paid in full.

BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS LMC NOTE OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS LMC NOTE OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTIONS OF BORROWER OR HOLDER. BORROWER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY HOLDER EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH BORROWER AND HOLDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO PROVIDE THE FINANCING EVIDENCED BY THIS LMC NOTE.

IN WITNESS WHEREOF, the Borrower has executed this LMC Note on the 15th day of June, 2000.

Louisville Medical Center, Inc.  
a Kentucky nonprofit corporation

---

Robert Barbier, General Manager

ENDORSEMENT

Pay, without recourse, to the order of Fifth Third Bank, a Michigan corporation, as the Holder of the Bonds issued under and pursuant to the Bond Purchase Loan Agreement dated July 31, 2009 from the undersigned.

**Approved as to form and legality:**

MIKE O'CONNELL  
JEFFERSON COUNTY ATTORNEY

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, KENTUCKY

\_\_\_\_\_  
James T. Carey  
Assistant County Attorney

By: \_\_\_\_\_  
Jerry E. Abramson, Mayor

(SEAL)  
ATTEST:

\_\_\_\_\_  
Kathleen J. Herron  
Council Clerk

ACCEPTANCE OF ASSIGNMENT

The above assignment is hereby accepted.

Fifth Third Bank, a Michigan corporation

By: \_\_\_\_\_  
Authorized Representative

UNITED STATES OF AMERICA  
COMMONWEALTH OF KENTUCKY

No. R-1

THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY  
LOUISVILLE MEDICAL CENTER TAXABLE REVENUE BONDS, SERIES 2009

REGISTERED OWNER: Fifth Third Bank  
a Michigan corporation  
INITIAL PRINCIPAL AMOUNT: \$6,550,000  
DATE OF ORIGINAL ISSUE: July 31, 2009  
MATURITY DATE: May 1, 2014

The Louisville/Jefferson County Metro Government, Kentucky (the “Issuer”), a municipal corporation and a de jure political subdivision duly organized and validly existing under the laws of the Commonwealth of Kentucky, for value received, hereby promises to pay solely from sources hereinafter described in lawful money of the United States of America to the Registered Owner named above, or registered assigns, in monthly installments on the dates herein specified, the principal sum of Six Million Five Hundred Fifty Thousand and no/100 Dollars (\$6,550,000.00), together with interest on the unpaid principal balance from time to time.

(a) Prior to maturity or an Event of Default, the unpaid principal balance of the Bonds shall bear interest at the rate of Three Hundred (300) Basis Points over Thirty (30) Day LIBOR per annum based on a 360 day year with each month consisting of 30 days.

(b) In consideration of and in repayment of the Loan the Borrower shall make the payments provided for herein in time and amount sufficient to pay when due all principal of and interest on the Bonds. Interest shall be due and payable on May 1 and November 1 of each year. Principal shall be due and payable May 1 of each year.

(c) If any installment of principal and/or interest provided herein becomes due and payable on a date other than a Banking Day, the maturity of the installment of principal or interest shall be extended to the next succeeding Banking Day.

This Bond is subject to optional redemption at the election of the Borrower, as a whole or in part, on any principal payment date; provided that no Event of Default has occurred or is continuing, and upon Issuer providing Registered Owner at least 20 days prior written notice (the “Notice Period”), Issuer, Borrower, and Registered Owner agree that Borrower may elect to prepay its obligations under the Note by paying to Registered Owner on a Principal Payment Date (the “Prepayment Date”) the total of the following: (a) all accrued interest, Taxes, late charges and other amounts then due and payable under the Agreement; plus (b) the remaining principal balance payable by Borrower under the Note as of said Prepayment Date (hereinafter, the “Principal Balance”).

Notwithstanding anything herein to the contrary, in the event of an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired) or after maturity, interest on the unpaid principal balance hereof shall be at the Default Rate, commencing on the date of occurrence of the Event of Default or maturity as applicable.

Terms used herein not specifically defined herein shall have the meaning ascribed to them in the Bond Purchase and Loan Agreement (the “Agreement”), dated July 31, 2009, among the Issuer, the Registered Owner and Louisville Medical Center, Inc. (the “Borrower”).

This Bond is the Issuer’s Louisville Medical Center Tax Exempt Revenue Bonds, Series 2009 being issued in the aggregate principal amount of Six Million Five Hundred Fifty Thousand and no/100 Dollars (\$6,550,000.00) under the Agreement. Such Bond is being issued for the purpose of providing funds to finance and refinance the acquisition, construction, installation and equipping of the Project, by lending such funds to the Borrower pursuant to the Agreement which prescribes the terms and conditions under which the Borrower shall repay such funds and pursuant to which the Borrower will execute and deliver to the Issuer its promissory Note (the “Note”) in the principal amount equal to the aggregate principal amount of this Bond in order to evidence such repayment obligation. The Agreement and the Mortgage and Security Agreement create a lien on and a security interest in the Project as security for the Note and this Bond.

The Bond is issued under and entitled to the security of the Agreement pursuant to which the Note and all rights of the Issuer under the Agreement, are pledged and assigned by the Issuer to the Registered Owner as security for this Bond.

Reference is made to the Agreement and to all amendments thereto and to the Mortgage and Security Agreement for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Registered Owner, and any subsequent registered owners of the Bonds, and to all the provisions of which the Registered Owner hereof by the acceptance of this Bond assents.

This Bond is transferable by the Registered Owner in person or by its attorney duly authorized in writing at the office of the Registrar, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement and upon surrender and cancellation of this Bond. Upon such transfer, a new registered Bond of the same maturity, authorized denomination, and the aggregate principal amount will be issued to the transferee in exchange therefore.

The Issuer and the Registrar may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or an account of principal and premium, if any, hereon and interest due hereon for all other purposes and neither the Issuer nor the Registrar nor any paying agent shall be affected by any notice to the contrary.

This Bond shall be redeemable and is subject to redemption in accordance with Article XI of the Agreement.

All payments of principal and interest on this Bond shall be made in lawful money of the United States of America. In addition, upon the occurrence of an Event of Default (assuming any applicable cure period provided for in the Agreement has expired), the principal amount due

hereunder, together with interest thereon at the Default Rate from the date of the occurrence of the Event of Default shall continue as an obligation of the Issuer until paid.

NEITHER THE CREDIT NOR THE TAXING POWER OF THE ISSUER, THE COMMONWEALTH OF KENTUCKY OR ANY OTHER POLITICAL SUBDIVISION THEREOF, IS PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS PROJECT BOND NOR SHALL THIS BOND BE DEEMED TO BE AN OBLIGATION OF THE ISSUER, THE COMMONWEALTH OF KENTUCKY OR ANY OTHER POLITICAL SUBDIVISION THEREOF. THIS BOND DOES NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION TO WHICH THE FAITH AND CREDIT OF THE ISSUER ARE PLEDGED BUT IS A SPECIAL LIMITED OBLIGATION OF THE ISSUER, WHICH IS OBLIGATED TO PAY THE PRINCIPAL OF AND INTEREST ON THIS BOND SOLELY AND EXCLUSIVELY OUT OF THE REVENUES DESCRIBED IN THE AGREEMENT. NO COVENANT OR AGREEMENT CONTAINED IN THIS BOND OR THE AGREEMENT SHALL BE DEEMED TO BE A COVENANT OR AGREEMENT OF ANY MEMBER OF THE ISSUER OR OF ANY OFFICER OR EMPLOYEE OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY, AND NEITHER THE MEMBERS OF THE ISSUER NOR ANY OFFICER OR EMPLOYEE OF THE ISSUER EXECUTING THIS BOND SHALL BE LIABLE PERSONALLY ON THIS BOND OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OF THIS BOND.

The Registered Owner shall have such rights and remedies, upon the occurrence of an Event of Default, as are provided in the Agreement. In certain events, on the conditions and in the manner and with the effect set forth in the Agreement, the principal of all the Bonds issued under the Agreement and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of the Agreement, or of any supplements thereto, may be made to the extent and the circumstances permitted by the Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the Commonwealth of Kentucky and under the Agreement precedent to and in the issuance of this Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Bond have been duly authorized by the Issuer.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Agreement until the certificate of authentication hereon shall have been duly executed by the Registrar.

[Remainder of this page left blank intentionally.]

IN WITNESS WHEREOF, THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, has caused this Bond to bear the original or facsimile signature of Jerry E. Abramson, as the Mayor of the Louisville/Jefferson County Metro Government, Kentucky and to bear the original or facsimile signature of Kathleen J. Herron as the Council Clerk of the Louisville/Jefferson County Metro Government, Kentucky, and a facsimile of its corporate seal to be imprinted hereon, on the 30<sup>th</sup> day of July, 2009.

**Approved as to form and legality:**

MIKE O'CONNELL  
JEFFERSON COUNTY ATTORNEY

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT, KENTUCKY

\_\_\_\_\_  
James T. Carey  
Assistant County Attorney

By: \_\_\_\_\_  
Jerry E. Abramson, Mayor

(SEAL)  
ATTEST:

\_\_\_\_\_  
Kathleen J. Herron  
Council Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue designated therein and issued under the provisions of the within-mentioned Agreement.

FIFTH THIRD BANK  
a Michigan corporation

By: \_\_\_\_\_  
Authorized Officer

Dated: July 31, 2009



ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_

\_\_\_\_\_  
(Please print or typewrite name and address of transferee.)

Please insert Social Security Number  
or other identifying number of transferee:

\_\_\_\_\_

\_\_\_\_\_

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_, attorney to transfer the within Bond on the books kept  
for registration thereof, with full power of substitution in the premises.

Date: \_\_\_\_\_

\_\_\_\_\_  
NOTICE: Signature must be  
Notarized

NOTICE: The signature to this  
assignment must correspond with the  
name as it appears upon the face of the  
Bond in every particular, without  
alteration or enlargement or any change  
whatsoever.

Commonwealth of Kentucky )  
 ) :ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 2009, by  
\_\_\_\_\_, the \_\_\_\_\_ of Fifth  
Third Bank, a Michigan corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
My Commission expires:\_\_\_\_\_

Schedule I  
Permitted Encumbrances

All encumbrances, encroachments, liens, or other charges resulting or existing from the issuance of the County of Jefferson, Kentucky, Louisville Medical Center Refunding and Revenue Bonds, Series 2002 in the principal amount of \$18,000,000 dated as of May 15, 2002, including but not limited to all encumbrances, liens and security interests held by the Trustee under the Trust Indenture, Bond Purchase Agreement, Loan Agreement, and Mortgage and Security Agreement entered into as part of the such Bonds.

Schedule II  
Interim Financing Costs

\$6,226,278.00 owed to 5/3 Bank